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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945 46

No. 965

FEDERAL COMMUNICATIONS COMMISSION, PETITIONER

vs.

WOKO, INCORPORATED

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED MARCH 19, 1946
CERTIORARI GRANTED APRIL 22, 1946

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 972

FEDERAL COMMUNICATIONS COMMISSION, PETITIONER

vs.

WOKO, INCORPORATED

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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1 In the United States Court of Appeals for the District of Columbia

No. 9021

WOKO, INCORPORATED, APPELLANT

v.

FEDERAL COMMUNICATIONS COMMISSION, APPELLEE.

Appeal from decision of the Federal Communications Commission

Joint Appendix

Filed Sept. 1, 1945

In the United States Court of Appeals for the District of
1 Columbia

No. 9021

WOKO, INCORPORATED, APPELLANT

v.

FEDERAL COMMUNICATIONS COMMISSION, APPELLEE

Notice of appeal from decision of Federal Communications Commission and statement of reasons therefor

Filed May 21, 1945

Notice of appeal

Now comes WOKO, Incorporated, this 21st day of May, 1945, pursuant to Sections 402 (b) (1) and 402 (c) of the Com-
2 munications Act of 1934, as Amended, and files this Notice of Appeal from the decision of the Federal Communications Commission, dated March 27, 1945, effective April 27, 1945, denying appellant's application for renewal of radio station license of Station WOKO. On April 28, 1945, appellant filed with the Federal Communications Commission a Petition for Rehearing of the said Commission's decision of March 27, 1945, which Petition for Rehearing was denied by the Commission on May 1, 1945.

APPELLANT'S STANDING TO APPEAL

Appellant has standing under Section 402 (b) (1) of the Communications Act of 1934, as Amended, to take this appeal as

an applicant for renewal of an existing radio station license whose application has been refused by the Federal Communications Commission.

NATURE OF THE PROCEEDINGS FROM WHICH APPEAL IS TAKEN

Appellant has been for many years the licensee of standard broadcast station WOKO at Albany, New York. This station operates on the frequency 1460 kc with power of 1000 watts day and 500 watts night. On September 29, 1942, appellant filed an application pursuant to Section 308 (a) of the Communications Act of 1934, as Amended, for renewal of its station license. On January 12, 1943, this application was designated for hearing, and by Order dated January 26, 1943, the Commission specified the following issues for the hearing:

"1. To determine whether the representations and statements made to the Commission or its predecessors, the Federal Radio Commission, by the licensee, its officers, directors, stockholders, or agents, with respect to the ownership or transfer of, subscription to, or consideration paid for the stock of WOKO, Inc., truly and accurately reflect the facts.

"2. To determine all the circumstances and conditions under which the stock of WOKO, Inc., has been issued, transferred or assigned.

"3. To determine whether or not the applicant is qualified to continue the operation of Station WOKO.

"4. To determine whether, in view of the facts adduced under the foregoing issues, public interest, convenience and necessity would be served by a grant of this application."

Prior to the commencement of the hearing, appellant filed a motion with the Commission requesting the Commission to amend and enlarge the issues for the hearing so as to permit the appellant to offer testimony as to the nature, character, and extent of the program service rendered by Station WOKO in the past as well as that which would be rendered in the future. The Commission's Order on this motion read in part as follows:

"It Appearing that the hearing issues now designated by the Commission are broad enough to permit, within reasonable bounds, the introduction of the evidence suggested by the proposed issues of the petitioner, and that the requested amendment and enlargement of the hearing issues is therefore unnecessary."

Hearings were held on July 1, 2, 3, 5, 22, August 3, and September 20, 21 and 22, 1943, before a hearing officer designated by the Commission.

On November 13, 1944, the Commission released its proposed findings and conclusions, concluding that the application for re-

newal of license should be denied. The Commission found that some twelve years previously the appellant had failed to disclose that 24% of its stock was beneficially owned by one Sam Pickard or his wife, and that this beneficial ownership had been concealed from the Commission in numerous applications and statements filed with or made to the Commission on behalf of the appellant. Mr. Sam Pickard had been a member of the Federal Radio Commission and was an officer of the Columbia Broadcasting System at the time he acquired his interest in this stock. The Commission did not find or even suggest in its proposed decision that Mr. Pickard or his wife was not qualified to own a minority
4 interest in a corporate licensee of a radio station, or that if the disclosure of their beneficial interest in the stock of the appellant corporation had been made, this would have in any way resulted in Commission action different from that which was taken in any particular instance. In other words, the fact of ownership of a minority interest in appellant corporation by Pickard or his wife was not found by the Commission to have been material in the sense that its disclosure at its inception or at any time subsequent thereto would have justified or required denial of any authorization requested by the appellant. The Commission's proposed conclusions to deny the appellant's application for renewal of license was grounded on the failure to disclose such beneficial ownership and a finding that misrepresentations had been made to the Commission for the purpose of concealing such ownership. The Commission made no finding that the purpose of concealment of said beneficial ownership was to hamper or impede the Commission in the discharge of its functions, to induce or deter it from taking any action, or that such concealment had any effect upon the Commission. The uncontradicted record evidence was that concealment of the Pickard interest was motivated solely by personal business considerations of Pickard, and in no way related to the Communications Commission or its predecessor. The Commission did not find that the appellant, its officers or directors, or its stockholders other than the Pickards, received any benefit whatsoever from such concealment, nor did the Commission find that the motive which Pickard had for concealing his interest in appellant arose out of business interests in which appellant, its officers, directors or stockholders, other than Pickard, had any concern. The Commission did not find that the concealment of Pickard's interest was at the request or solicitation of any officer, director, or stockholder of appellant, or was for any purpose other than to further Pickard's private interest. On the contrary, the Commis-
5 sion's proposed decision disclosed that Howard E. Smith, an officer and holder of 25½% of the stock of the appellant, who was charged by the Commission with having made

misrepresentations to keep secret the beneficial ownership of the Pickards, repeatedly sought to obtain authorization from Pickard to make full disclosure to the Commission concerning his interest in the corporation. The Commission did not find, nor did its proposed decision suggest that in the operation of its radio station or in the discharge of its obligations to the Commission, appellant had been derelict in any degree, except with respect to the disclosure of the Pickard interest.

The uncontroverted record evidence showed that the appellant had at all times discharged its obligation to give a program service in the public interest and that its record in that respect had been not merely unimpeachable, but highly commendable.

Appellant filed exceptions to the Commission's proposed decision, and oral argument was held before the Commission. At this argument, appellant, through counsel, with authorization from Pickard, formally advised the Commission that appellant had offered to purchase, and Pickard had agreed to sell all of Pickard's stock in appellant corporation. After the oral argument the Commission adopted its proposed findings and conclusions, without change, as its final findings and conclusions, and denied the application for renewal of license.

Appellant filed a timely petition for rehearing pursuant to Section 405 of the Communications Act of 1934, as Amended. In this petition appellant tendered to the Commission a plan of reorganization which proposed that appellant corporation would buy up 51% of its outstanding stock which appellant stated would be sold to persons fully qualified and willing to purchase such stock, subject to the approval of the Commission. The beneficial ownership of the remaining 49% of the appellant's stock was to remain with Harold E. Smith and Raymond M. Curtis (who at present own an aggregate of 51%), but said 49% was to

6 placed in a voting trust, the voting trustee and the trust agreement to be first approved by the Commission. It was further proposed that all officers and directors in the appellant corporation would resign and would not be officers or directors in the reorganized corporation. This proposal was effectively calculated to insure that no person now or in the past having any voice or influence as officer, director or stockholder in the appellant corporation would have any control over or ability to influence the policies of the appellant corporation in the future, and to insure that the management, direction, and control of the corporation would be in the hands of persons whose qualifications were approved by the Commission. This petition, filed April 28, 1945, was denied on May 1, 1945, without opinion, by Order of the Commission.

Appellant has continued to operate Station WOKO subsequent to the expiration of its regular license therefor by virtue of temporary authorizations extended from time to time by the Commission. By Order of May 1, 1945, the Commission authorized the appellant to continue "operation of Station WOKO until further order of the Commission." The Order denying appellant's Petition for Rehearing contained a paragraph purporting to terminate this authorization effective May 31, 1945. On May 19, appellant filed a petition with the Commission requesting that it modify its Order denying the Petition for Rehearing so as to permit appellant to continue operating WOKO pending determination of this appeal or enter such other appropriate order having that effect.

REASONS FOR APPEAL

The Commission's decision from which this appeal is taken is erroneous and should be reversed for the following reasons:

1. The Commission's decision deleting Station WOKO is an unlawful attempt to impose sanctions, and constitutes an abuse of the Commission's licensing power.

7 2. The Commission erred in concluding that appellant cannot be entrusted with the responsibilities of a licensee, in the absence of any finding or any evidence upon which a finding could be predicated that appellant, its officers, directors, or stockholders, ever concealed or misrepresented a fact to the Commission, the disclosure of which would have been material in the sense that it would have affected the Commission's decision on any application in connection with which such alleged misrepresentation or concealment was made.

3. The Commission's refusal to renew appellant's license is erroneous because the record does not support a finding that a misrepresentation of any material fact was made by the appellant or any of its officers, stockholders, or directors.

4. The Commission's conclusion that the appellant cannot be entrusted with the responsibilities of a licensee does not follow from the basic findings made by the Commission, even assuming such findings may be accepted without regard to whether they are supported by substantial evidence.

5. The Commission erred in concluding that appellant could not be entrusted with the responsibilities of a licensee without considering and making findings concerning the manner in which appellant had operated its radio station over a period of more than twelve years.

6. The Commission erred in concluding that the public interest, convenience, or necessity would not be served by renewal of ap-

pellant's license in the absence of any finding that public interest, convenience, and necessity had not been served by appellant's operation of Radio Station WOKO in the past and in the face of uncontradicted record evidence requiring a finding that public interest, convenience, and necessity had been served by such operation.

7. The Commission erred in failing to find and conclude
8 that any misrepresentation, concealment, or failure to disclose the Pickard beneficial stock ownership was immaterial and that had disclosure of such ownership been made either at its inception or any time thereafter the existence of such ownership would have neither required nor justified a denial of any authorization requested by appellant.

8. The Commission erred in holding that any disclosure respecting the identity of beneficial minority stock ownership of a corporate applicant called for by Commission's application forms or regulations is *ipso facto* of such substance and importance that a failure to disclose such information, regardless of motive, purpose, or materiality under the Communications Act, justifies the conclusion that an applicant corporation may not be entrusted with a license to operate a radio broadcast station.

9. The Commission erred in failing to find and conclude that appellant is in all respects qualified to operate a radio broadcast station.

10. The Commission's conclusion that public interest, convenience, or necessity would not be served by a renewal of appellant's license to operate WOKO is contrary to law and in law is arbitrary and capricious.

11. The Commission erred in failing to adopt the proposed findings and conclusion submitted by appellant.

12. The Commission erred in denying appellant's Petition for Rehearing.

13. The Commission erred in failing to grant a further hearing for the purpose of considering the new facts and circumstances brought to the Commission's attention by said Petition for Rehearing.

14. The Commission erred, assuming arguendo that appellant with its present management and ownership is not qualified to operate WOKO, in refusing to permit appellant to reorganize so that its management and ownership would be in the hands of qualified persons approved by the Commission.

9 15. The Commission erred in refusing to modify its proposed findings in the manner requested by appellant in its exceptions thereto.

16. The Commission erred in failing to renew appellant's license to operate Station WOKO.

RELIEF REQUESTED

Appellant prays that this Court review the action of the Commission and upon such review to reverse the Commission's Orders of March 27, 1945, and May 1, 1945, and remand the matter to the Commission for further action in conformity to the applicable provisions of the Communications Act of 1934, as Amended, and the judgment of this Court.

Respectfully submitted.

WOKO, INCORPORATED,
By DEMPSEY AND KOPLOVITZ,
Its Attorneys.

By WILLIAM J. DEMPSEY,
938 Bowen Bldg., Washington, D. C.

May 21, 1945.

* * * * *

F. C. C. Form No. 303 (Revised Feb. 10, 1942).
File No. B1–R–253. Call Letters WOKO.

Before Federal Communications Commission

Application for renewal of standard broadcast station license

Submit in triplicate direct to the Federal Communications Commission, Washington, D. C. Swear to at least two copies.

Before executing application, see Communications Act of 1934, as amended, Part I (Rules of Practice and Procedure), Part III (Standard Broadcast Rules) and sec. 43.1 of the Commission's Rules and Regulations, and the Standards of Good Engineering Practice Concerning Standard Broadcast Stations.

To the Federal Communications Commission:

1. Name of applicant:[1] WOKO, Inc.
2. Post-office address: Street and number, 8 Elk Street; City, Albany; State, New York.
3. Is applicant a citizen of the United States? Corporation.
4. Is the applicant a representative of an alien or foreign government? No.
5. Give the file number and date of the license sought to be renewed: B1–R–253, issued July 28, 1942.
6. Operation authorized by the existing license and for which renewal of license is requested:
   (a) Frequency: 1460 kilocycles.
   (b) Power: (1) Night 500 watts. (2) Day 1000 watts.
   (c) Hours of operation: Unlimited.

(Should be stated exactly as in existing license. Time-sharing stations, limited time stations, and station rebroadcasting pro-

[1] Name of applicant must be identical with that shown in current license.

grams of others shall file documents as specified by sections 3.74, 3.80, and 3.408, subsection (b), footnote 3, Rules of Practice and Procedure, respectively.)

7. (a) Do the reports filed by applicant under sec. 1.361 of the Rules of Practice and Procedure reflect substantially applicant's status with regard to all conditions stated in such reports as of the date this application was executed?[2] (Answer yes or no) Yes.

(b) If not, submit a separate statement herewith showing changes.

(c) Has applicant filed the report and the necessary supplemental reports required by sec. 43.1 of the Rules? (Answer yes or no) Yes.

11 8. (a) Is applicant now, or has applicant been, party to a proceeding in any Federal court involving the monopolizing of, or the attempt to monopolize, radio communication, directly or indirectly, through control of the manufacture or sale of radio apparatus, by exclusive traffic arrangements, or by any other means, or of using unfair methods of competition? (Answer yes or no.) No.

(b) Is applicant directly or indirectly controlled by any person involved in such proceeding? (Answer yes or no.) No.

9. (a) In what respect, if any, does the apparatus, antenna, or technical operation differ from that described in the last application for license or renewal of license? (If none, so state.) None.

(b) If any changes whatsoever have been made in the fundamental audio or radio circuit of the transmitter or in the coupling and phasing equipment affecting the schematic diagram heretofore filed with the Commission, the applicant represents that there is attached an accurate corrected diagram. (If none, so state.) None.

10. Specify actual minimum periods during the regular broadcast day (6 a. m. to 12 midnight, local standard time) the station has been operated since the effective date of existing license:[3]

	Before 6 p. m.	After 6 p. m.	Total minimum hours daily
Sunday	7.30 a. m.–6.00 p. m.	6.00 p. m.–1.00 a. m.	17½
Monday	6.00 a. m.–6.00 p. m.	6.00 p. m.–1.00 a. m.	19
Tuesday	6.00 a. m.–6.00 p. m.	6.00 p. m.–1.00 a. m.	19
Wednesday	6.00 a. m.–6.00 p. m.	6.00 p. m.–1.00 a. m.	19
Thursday	6.00 a. m.–6.00 p. m.	6.00 p. m.–1.00 a. m.	19
Friday	6.00 a. m.–6.00 p. m.	6.00 p. m.–1.00 a. m.	19
Saturday	6.00 a. m.–6.00 p. m.	6.00 p. m.–1.00 a. m.	19

[2] Action upon this application will be held in abeyance, pending the filing of such reports, if delinquent.

[3] If minimum hours operated each day are not in compliance with sec. 3.71 of the Rules, attach hereto a statement of explanation.

12 11. Under existing license—

(a) State average number of hours per month devoted to commercial programs: 250.

(b) State average number of hours per month used in advertising any business (other than broadcasting) in which applicant is engaged either directly or indirectly. None.

(c) State average number of hours per month devoted to chain programs, specifying the network organization furnishing same:

Commercial programs: 229 hrs.

Sustaining programs: 167 hrs.

Furnished by Columbia Broadcasting System

(d) State the average percentage of time per month (combined total should equal 100 per cent) devoted to—

Commercial programs		*Sustaining programs*	
1. Entertainment	37.5	1. Entertainment	21.4
2. Educational		2. Educational	6.7
3. Religious		3. Religious	4.0
4. Agricultural		4. Agricultural	5.4
5. Civic [4]		5. Civic [4]	3.6
6. Governmental [5]		6. Governmental [5]	12.1
7. News	6.8	7. News	2.5
8.		8.	
9. Total	44.3	9. Total	55.7

[4] Include in this item fraternal, chamber of commerce, charitable, and other civic but nongovernmental programs.

[5] Include in this item all municipal, state, and federal programs, including political or controversial broadcasts by public officials, or candidates for public office, and regardless of whether or not the programs included under this item are entertainment, educational, agricultural, etc., in character.

12. (a) Are phonograph records used? Yes. If so, state average number of hours per month: 10.

(b) Are any other mechanical records (electrical transcriptions, etc.) used? Yes. If so, state average number of hours per month: 40.

13 13.[6] (a) Set forth fully any respects in which character of the program service proposed is different from that carried on under the existing license as reflected in your answer to section 11. Time devoted to civic and governmental programs increased, at the expense of entertainment. This trend will undoubtedly continue.

[6] Any document already on file with the Commission may be incorporated as part of this application by reference if accompanied by a statement that there has been no change therein since the date of filing, and provided that the reference is sufficiently complete by date of filing, number, and application in connection with which filed to permit identification.

(b) Attach copies of all contracts or give the substance of all understandings of a general nature affecting program service, including (1) chain broadcast contracts, (2) transcription service contracts, (3) bulk time sales contracts, and (4) contracts or understandings which confer upon persons other than the licensee (or employees thereof entirely under the direction of the licensee) any power or authority with respect to the selection or production of programs or the sale of time, even though ultimate determination with respect to such matters is retained by the licensee. Exhibit A, attached.

14.[6] Set forth in an exhibit the name, address, citizenship and experience of each employee of the station having any responsibilities in connection with the technical operation or with programs, showing the position and duties of each. On file, Exhibit C. File No. B1–R–253, application for renewal of license, filed April 29, 1941; no change in executive staff and only minor changes in remainder of staff since filing.

15. Applicant's last application for station license is to be considered as part of this application and the truth of the statements therein contained is hereby reaffirmed, except insofar as the contrary expressly appears herein, and in the following particulars. None.

16. Applicant waives any claim to the use of any particular frequency, or of the ether, as against the regulatory power of the United States, because of the previous use of the same, whether by license or otherwise, and requests a renewal of its existing license in accordance with this application.

Dated this 28th day of September 1942.

WOKO, INC.
(Must correspond with item 1) *Applicant.*
By HAROLD E. SMITH,
Sec'y-Treas. (Official.)

(Be sure all necessary information is furnished and all questions are fully answered. If any portions of the application are not applicable, specifically so state, and show reasons therefor. Defective applications may be returned without consideration.—section 1.72, Rules of Practice and Procedure.)

STATE OF NEW YORK,
County of Albany, ss:

(sworn upon his oath.

Harold E. Smith, being first duly (affirmed according to law, deposes and says that he is the Secretary-Treasurer of the above-named applicant, and that the facts stated in the foregoing application, and all exhibits attached thereto, are true of his own

See footnote 6 on p. 9.

knowledge, except as to such statements as are therein stated on information and belief, and as to such statements he believes them to be true.

HAROLD E. SMITH,
Affiant.[1]

Subscribed and sworn to before me this 28th day of September, 1942.

[SEAL] DEUEL RICHARDSON,
Notary public.

(Notary public's seal must be affixed where law of jurisdiction requires, otherwise state law does not require seal.)
My commission expires March 30, 1943.

15 *Exhibit "A" to application*

1. Contract with Columbia Broadcasting System last filed with Form No. 335, accompanying application for renewal of license filed April 29, 1941, File No. B1–R–253.

2. Substance of transcription service contract: Contract between WOKO, Inc., and Standard Radio Inc., made June 11, 1940, for a two-year period with automatic one-year renewals, provides for Standard to furnish station with a program library service, with a basic library of 2,000 musical selections and monthly releases of at least 20 additional musical selections, plus cabinets and card index system, at a regular monthly rental. There is no restriction on the use of this library, except that station is responsible for performing rights licenses and is required to pay music royalty fees on programs for regional and national advertisers. No royalty fees are required for local advertisers' programs and for sustaining programs. WOKO, Inc., is privileged to sublease the use of the library to Station WABY. The contract is to be deemed renewed for further periods of one year each under the same terms and conditions unless either party shall have given notice to the other of its intention to terminate sixty days before the end of any contract period.

3. No bulk time sales contract has ever been accepted or negotiated by WOKO, Inc.

4. No other contracts, agreements or understandings exist affecting the control of programs or sale of time.

F. C. C. Form No. 303 (revised Feb. 10, 1942).
File No. B1–R–253. Call Letters WOKO.

[1] Must be subscribed and verified by party applicant, by one of the parties if more than one, by an officer if applicant is a corporation, or by attorney of applicant only under the provisions of section 1.121 which must be fully explained.

Before Federal Communications Commission

Application for renewal of standard broadcast station license

Submit in triplicate direct to the Federal Communications Commission, Washington, D. C. Swear to at least two copies.

16 Before executing application, see Communications Act of 1934, as amended, Part I (Rules of Practice and Procedure), Part III (Standard Broadcast Rules) and sec. 43.1 of the Commission's Rules and Regulations, and the Standards of Good Engineering Practice Concerning Standard Broadcast Stations.

To the Federal Communications Commission:

1. Name of applicant:[1] WOKO, Inc.

2. Post-office address: Street and number, 8 Elk Street; City, Albany; State, New York.

3. Is applicant a citizen of the United States? Corporation.

4. Is the applicant a representative of an alien or foreign government? No.

5. Give the file number and date of the license sought to be renewed: B1–R–253, issued July 28, 1942.

6. Operation authorized by the existing license and for which renewal of license is requested:

(a) Frequency, 1460 kilocycles.

(b) Power: (1) Night 500 watts. (2) Day 1,000 watts.

(c) Hours of operation: auxiliary transmitter for emergency use only.

(Should be stated exactly as in existing license. Time-sharing stations, limited time stations, and stations rebroadcasting programs of others shall file documents as specified by sections 3.74, 3.80, and 3.408, subsection (b), footnote 3, Rules of Practice and Procedure, respectively.)

7. (a) Do the reports filed by applicant under sec. 1.361 of the Rules of Practice and Procedure reflect substantially applicant's status with regard to all conditions stated in such reports as of the date this application was executed?[2] (Answer yes or no.) Yes.

(b) If not, submit a separate statement herewith showing changes.

17 (c) Has applicant filed the report and the necessary supplemental reports required by sec. 43.1 of the Rules? (Answer yes or no) Yes.

---

[1] Name of applicant must be identical with that shown in current license.

[2] Action upon this application will be held in abeyance, pending the filing of such reports, if delinquent.

8. (a) Is applicant now, or has applicant been, party to a proceeding in any Federal court involving the monopolizing of, or the attempt to monopolize, radio communication, directly or indirectly, through control of the manufacture or sale of radio apparatus, by exclusive traffic arrangements, or by any other means, or of using unfair methods of competition? (Answer yes or no) No.

(b) Is applicant directly or indirectly controlled by any person involved in such proceeding? (Answer yes or no) No.

9. (a) In what respect, if any, does the apparatus, antenna, or technical operation differ from that described in the last application for license or renewal of license? (If none, so state) None.

(b) If any changes whatsoever have been made in the fundamental audio or radio circuit of the transmitter or in the coupling and phasing equipment affecting the schematic diagram heretofore filed with the Commission, the applicant represents that there is attached an accurate corrected diagram. (If none, so state) None.

10. Specify actual minimum periods during the regular broadcast day (6 a. m. to 12 midnight, local standard time) the station has been operated since the effective date of existing license: [3]

	Before 6 p. m.	After 6 p. m.	Total minimum hours daily
Sunday	7.30 a. m.-6.00 p. m	6.00 p. m.-1.00 a. m	17½
Monday	6.00 a. m.-6.00 p. m	6.00 p. m.-1.00 a. m	19
Tuesday	6.00 a. m.-6.00 p. m	6.00 p. m.-1.00 a. m	19
Wednesday	6.00 a. m.-6.00 p. m	6.00 p. m.-1.00 a. m	19
Thursday	6.00 a. m.-6.00 p. m	6.00 p. m.-1.00 a. m	19
Friday	6.00 a. m.-6.00 p. m	6.00 p. m.-1.00 a. m	19
Saturday	6.00 a. m.-6.00 p. m	6.00 p. m.-1.00 a. m	19

18 . 11. Under existing license—

(a) State average number of hours per month devoted to commercial programs: 250.

(b) State average number of hours per month used in advertising any business (other than broadcasting) in which applicant is engaged either directly or indirectly: None.

(c) State average number of hours per month devoted to chain programs, specifying the network organization furnishing same:

Commercial programs 229 hrs.

Sustaining programs 167 hrs.

[3] If minimum hours operated each day are not in compliance with sec. 3.71 of the Rules, attach hereto a statement of explanation.

Furnished by Columbia Broadcasting System

(d) State the average percentage of time per month (combined total should equal 100 percent) devoted to—

	Commercial programs		*Sustaining programs*	
1.	Entertainment	37.5	Entertainment	21.4
2.	Educational		Educational	6.7
3.	Religious		Religious	4.0
4.	Agricultural		Agricultural	5.4
5.	Civic[4]		Civic[4]	3.6
6.	Governmental[5]		Governmental[5]	12.1
7.	News	6.8	News	2.5
8.				
9.	Total	44.3	Total	55.7

[4] Include in this item fraternal, chamber of commerce, charitable, and other civic but nongovernmental programs.

[5] Include in this item all municipal, state, and federal programs, including political or controversial broadcasts by public officials, or candidates for public office, and regardless of whether or not the programs included under this item are entertainment, educational, agricultural, etc., in character.

12. (a) Are phonograph records used? Yes. If so, state average number of hours per month: 10.

(b) Are any other mechanical records (electrical transcriptions, etc.) used? Yes. If so, state average number of hours per month: 40.

19 13.[6] (a) Set forth fully any respects in which the character of the program service proposed is different from that carried on under the existing license as reflected in your answer to section 11. Time devoted to civic and governmental programs increased, at the expense of entertainment. This trend will undoubtedly continue.

(b) Attach copies of all contracts or give the substance of all understandings of a general nature affecting program service, including (1) chain broadcast contracts, (2) transcription service contracts, (3) bulk time sales contracts, and (4) contracts or understandings which confer upon persons other than the licensee (or employees thereof entirely under the direction of the licensee) any power or authority with respect to the selection or production of programs or the sale of time, even though ultimate determination with respect to such matters is retained by the licensee. Exhibit A, attached.

14.[6] Set forth in an exhibit the name, address, citizenship and experience of each employee of the station having any responsibili-

[6] Any document already on file with the Commission may be incorporated as part of this application by reference if accompanied by a statement that there has been no change therein since the date of filing, and provided that the reference is sufficiently complete by date of filing, file number and application in connection with which filed, to permit identification.

ties in connection with the technical operation or with programs, showing the position and duties of each. On file, Exhibit C. File No. B1–R–253, application for renewal of license, filed April 29, 1941; no change in executive staff and only minor changes in remainder of staff since filing.

15. Applicant's last application for station license is to be considered as part of this application and the truth of the statements therein contained is hereby reaffirmed, except insofar as the contrary expressly appears herein, and in the following particulars. None.

16. Applicant waives any claim to the use of any particular frequency, or of the ether, as against the regulatory power of the United States, because of the previous use of the same, whether by license or otherwise, and requests a renewal of its existing license in accordance with this application.

Dated this 28th day of September 1942.

WOKO, INC.,
(Must correspond with item 1) *Applicant.*
By HAROLD E. SMITH,
Sec'y-Treas. (Official).

(Be sure all necessary information is furnished and all questions are fully answered. If any portions of the application are not applicable, specifically so state, and show reasons therefor. Defective applications may be returned without consideration.—section 1.72, Rules of Practice and Procedure.)

STATE OF NEW YORK,
County of Albany, ss:

(sworn upon his oath,

Harold E. Smith, being first duly (affirmed according to law, deposes and says that he is the Secretary-Treasurer of the above-named applicant, and that the facts stated in the foregoing application, and all exhibits attached thereto, are true of his own knowledge, except as to such statements as are therein stated on information and belief, and as to such statements he believes them to be true.

HAROLD E. SMITH.
Affiant.[1]

Subscribed and sworn to before me this 28th day of September 1942.

[SEAL]

DEUEL RICHARDSON,
Notary public.

[1] Must be subscribed and verified by party applicant, by one of the parties if more than one, by an officer if applicant is a corporation, or by attorney of applicant only under the provisions of section 1.121 which must be fully explained.

21 (Notary public's seal must be affixed where law of jurisdiction requires, otherwise state that law does not require seal.)

My commission expires March 30, 1943.

Before Federal Communications Commission

F. C. C. Form 335—May 1941. Call letters WOKO.

Supplement concerning chain broadcasting to application for standard broadcast authorization

(Submit in triplicate to Federal Communications Commission, Washington, D. C. Swear to at least two copies.)

1. Name of applicant: WOKO, Inc.

Post office address: Street and number, 8 Elk Street; City, Albany; State, New York.

2. Give date and file number of each application pending before the Federal Communications Commission.

Application—Modify C. P. for new frequency and power. Date—June 27, 1941. File No.—B1–P–3238.

Application—Renewal of license, WOKO. Date—September 28, 1942. File No.—B1–R–253.

3. Specify which of the foregoing applications this form is submitted to supplement—Renewal of license, B1–R–253.

4. (a) Has applicant any contract, arrangement or understanding, express or implied, with a network organization or the broadcasting of chain programs? Yes.

(b) Does applicant, in the event the application supplemented by this form is granted, propose to broadcast network programs? Yes.

(If applicant, prior to being notified of Commission action on the application supplemented by this form, changes his proposal with respect to broadcasting network programs or
22 enters into any arrangement or any change in arrangement with a network organization for the broadcasting of chain programs, F. C. C. Form 335 must be filed as an additional supplement to the application.)

* * * * *

5. If network programs are to be broadcast, state arrangements under which they are to be obtained and attached copies of any contractual arrangement which may have been made. If the arrangement is based on an oral understanding, a written statement of the arrangement should be admitted.[1] Copy of contract

[1] If any of the documents required to be furnished under this paragraph are already on file with the Federal Communications Commission, in lieu of refiling same, the applicant may incorporate same herein by reference, provided that such reference must include: (1) the date of filing; (2) identification of the requirement of the

with Columbia Broadcasting System last filed with Form No. 335, accompanying application for renewal of license filed April 29, 1941, File No. B1–R–253; no change. Standard CBS network contract, made June 10, 1940, signed by H. V. Akerberg, Vice-Pres. for CBS, and Harold E. Smith, Sec'y-Treas. for WOKO, Inc.

Dated this 28th day of September 1942.

WOKO, INC.,
(Must correspond with item 1) *Applicant.*
By HAROLD E. SMITH,
Sec'y-Treas. (Official.)

STATE OF NEW YORK,
County of Albany, ss:

Harold E. Smith being first duly (sworn upon his oath, affirmed according to law), deposes and says that he is the Secretary-Treasurer of the above-named applicant, and (if applicant is not an individual, state relation of affiant to applicant)
23 that the facts given in the foregoing statement, and all exhibits attached thereto, are true of his own knowledge, except as to such statements as are therein stated on information and belief, and as to such statements he believes them to be true and that the information submitted herein is full and complete.

HAROLD E. SMITH,
Affiant.[2]

Subscribed and sworn to before me this 28th day of September 1942.

[SEAL]. DEUEL RICHARDSON,
Notary Public.

(Notary public's seal must be affixed where few of jurisdiction requires, otherwise state that law does not require seal.)
My commission expires March 30, 1943.

Before Federal Communications Commission, Washington, D. C.

Notice of designation for hearing of application for renewal of license

Docket No. 6486. File No. B1–R–253

In re application of WOKO, Incorporated (WOKO).
Dated: September 28, 1942.

Federal Communications Commission pursuant to which it was filed (i. e., Rule No., Order No., or name and date of application form) and (3) a clear identification of the document referred to showing: (a) its character (i. e., affidavit, letter, contract, or report); (b) date the instrument was written or executed; (c) the name or names of the affiant, writer and contracting parties; and (d) a brief summary of the content or subject of such instrument.

[2] Must be subscribed and verified by party applicant, by one of the parties if more than one, by an officer if applicant is a corporation, or by attorney of applicant only under the provisions of section 1.121 which must be fully explained.

For: Renewal of License (Main & Auxiliary).
Class of Service: Broadcast.
Class of Station: Broadcast.
Location: Albany, New York.
Operating Assignment Specified.
24 Frequency: 1460 kc.
Power: 500 w. night; 1 kw. day.
Auxiliary: 500 w. night and day.
Hours of Operation: Unlimited.

You are hereby notified that the Commission has examined the above-described application and has designated the matter for hearing for the following reasons:

1. To determine whether the representations and statements made to the Commission or its predecessors, the Federal Radio Commission, by the licensee, its officers, directors, stockholders, or agents, with respect to the ownership or transfer of, subscription to, or consideration paid for the stock of WOKO, Inc., truly and accurately reflect the facts.

2. To determine all the circumstances and conditions under which the stock of WOKO, Inc., has been issued, transferred or assigned.

3. To determine whether or not the applicant is qualified to continue the operation of Station WOKO.

4. To determine whether, in view of the facts adduced under the foregoing issues, public interest, convenience and necessity would be served by a grant of this application.

The application involved herein will not be granted by the Commission unless the issues listed above are determined in favor of the applicant on the basis of a record duly and properly made by means of a formal hearing.

The applicant is hereby given the opportunity to obtain a hearing on such issues by filing a written appearance in accordance with the provisions of Section 1.382 (b) of the Commission's Rules of Practice and Procedure. Persons other than the applicant who desire to be heard must file a petition to intervene in accordance with the provisions of Section 1.102 of the Commission's Rules of Practice and Procedure.

25 The applicant's address is as follows:

WOKO, Incorporated,
Radio Station WOKO,
Radio Center, 8 Elk Street,
Albany, New York.

Dated at Washington, D. C. Jan. 26, 1943.

By the Commission,

T. J. SLOWIE,
Secretary.

Copies mailed to: Applicant—Geo. O. Sutton, 1030 National Press Bldg. One copy to Lillian Watson for Fed. Reg.

Rules referred to in attached Notice

Section 1.382. (b) In order to avail himself of the opportunity to be heard, the applicant, in person or by his attorney, shall, within 15 days of the mailing of the notice of designation for hearing by the Secretary, file with the Commission a written appearance stating that he will appear and present evidence on the issues specified in the statement of reasons furnished by the Commission on such date as may be fixed for the hearing. In cases other than standard broadcast, high frequency broadcast, international broadcast and television, the applicant will accompany his appearance with an additional copy of his application and supporting documents.

Section 1.102 Intervention. Petitions for intervention must set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, the facts on which the petitioner bases his claim that his intervention will be in the public interest and must be subscribed and verified in accordance with Sec. 1.122. The granting of a petition to intervene shall have the effect of permitting intervention before the Commission but shall not be considered as any recognition of any legal or equitable right or interest in the proceeding. The granting of such petition shall not have the effect of changing or enlarging the issues which shall be those specified in the Commission's notice of hearing unless on motion the Commission shall amend the same.

Section 1.122 Pleadings. All pleadings (not including applications or amendments thereto) filed by any party represented by an attorney, shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign and verify his pleading and state his address. Except when otherwise specifically provided by rule or statute, pleadings signed by the attorney for a party need not be verified or accompanied by affidavit. The signature of an attorney constitutes a certificate by him that he has read the pleadings; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the matter may proceed as though the pleading had not been served. For a wilful violation of this rule an attorney may be subjected to

appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

* * * * *

Before Federal Communications Commission

Notice of appearance and statement of facts

Comes now the applicant above-named and states that it will appear and desires to be heard in connection with the above-entitled application for renewal of license and that it expects to prove the following facts at the hearing thereon.

1. That the representations and statements made to the Commission or its predecessors, the Federal Radio Commission, by the licensee, its officers, directors, stockholders, or agents, with respect to the ownership or transfer of, subscription to, or consideration paid for the stock of WOKO, Inc., truly and accurately reflect the facts.

27 2. That it will truly and accurately present all the circumstances and conditions under which the stock of WOKO, Inc., had been issued, transferred or assigned.

3. That the applicant is qualified to continue the operation of Station WOKO.

4. That public interest, convenience and necessity would be served by a grant of this application.

Respectfully submitted.

WOKO, Inc.
HAROLD E. SMITH.

The applicant's address is as follows:
WOKO, Inc.,
Radio Station WOKO,
Radio Centre, 8 Elk Street,
Albany, New York.

* * * * *

Before Federal Communications Commission

Petition to amend and enlarge the issues

Comes now WOKO, Incorporated, licensee of Radio Station WOKO, Albany, New York, by its attorney, George O. Sutton, and requests that the Notice of Hearing in the above-styled docket case issued by the Commission under date of January 26, 1943, be amended and enlarged to include the following issues, or issues similar in substance thereto:

1. To determine the nature, character and extent of the program service rendered by Station WOKO in the past, as well as that which is proposed to be rendered in the future.

2. To determine the nature, character and extent of the activities and/or policies of the licensee, its officers, directors, stockholders, agents, and/or employees, with respect to the operation of the station, the public service rendered thereby, and the response of the public to such activities and/or service in the past, and the proposals for future policies, activities and operation.

28 In support of this request to amend and enlarge the issues, it is respectfully shown unto the Commission:

1. That the Commission by its action in designating the above-styled application for hearing questions whether or not the operation of Station WOKO has served and will continue to serve the public interest, convenience and necessity.

2. That it is not clear to the petitioner, based upon the issues set out in the Notice of Hearing, whether the Commission is attempting to make a determination that the future operation of the station will or will not be in and serve the public interest, convenience and necessity, without affording petitioner an opportunity to show the program and public service that has been rendered in the past by Station WOKO and that which it proposes for the future; hence, this request to include specific issues which will permit introduction of evidence bearing on this subject.

3. That petitioner herein believes that in order for the Commission to make a determination as to whether the continued operation of Station WOKO will serve the public interest, convenience and necessity, the Commission must not only take into account the past activities of the officers, directors, stockholders or agents of the licensee corporation, but must also consider the program and public service that has been rendered by the station, and that which is proposed to be rendered by it in the future. The activities and/or policies to be pursued in the future by the licensee and by its officers, directors, stockholders, agents, and/or employees are just as important as those in the past. The program service which is broadcast by a station and the public response thereto is the essence of any consideration and determination by the Commission as to what will or will not serve the public interest, convenience and necessity. The program service of a station cannot be overlooked or bypassed. The Communications Act of 1934 requires that the Commission

29 take into account numerous factors, such as the legal, technical and other qualifications of the applicant, including the programs that have been broadcast in the past, as well as those to be broadcast in the future, before it reaches the legal conclusion that the granting or denial of an application will serve the

public interest, convenience and necessity. This yardstick may not be so restricted as to make the phrase meaningless, or to deprive the applicant of making a proper showing that even though one or more of its officers, directors or stockholders may have been misguided or made mistakes, nevertheless, the program service it has rendered has served public interest, convenience and necessity, and its plans and policies for the future operation of the station will continue to serve the public interest, convenience and necessity. Not only have the courts enunciated such principles and doctrines, but the Commission itself has followed such a policy in the past.

Wherefore, it is respectfully prayed that the Commission amend and enlarge the Notice of Hearing in Docket No. 6486, File No. B1–R–253, dated January 26, 1943, to include the following issues, or issues similar in substance thereto:

1. To determine the nature, character and extent of the program service rendered by Station WOKO in the past, as well as that which is proposed to be rendered in the future.

2. To determine the nature, character and extent of the activities and/or policies of the licensee, its officers, directors, stockholders, agents, and/or employees, with respect to the operation of the station, the public service rendered thereby, and the response of the public to such activities and/or service in the past, and the proposals for future policies, activities and operation.

Respectfully submitted.

WOKO, INCORPORATED,
By GEO. O. SUITON,
Its Attorney,
1030 National Press Building, Washington, D. C.

JUNE 26, 1943.

* * * * *

30 Before Federal Communications Commission

Order

(June 30, 1943)

The Commission having under consideration the petition of WOKO, Inc., for leave to amend and enlarge the hearing issues as now designated on the above-entitled application, and

It Appearing that the hearing issues now designated by the Commission are broad enough to permit, within reasonable bounds, the introduction of the evidence suggested by the proposed issues of the petitioner, and that the requested amendment and enlargement of the hearing issues is therefore unnecessary.

It is Ordered, This 30th day of June, 1943, that the petition Be, and the Same Is Hereby, Denied.

By the Commission, Paul A. Walker, Commissioner.

T. J. SLOWIE,
Secretary.

Before Federal Communications Commission

Proposed findings of fact and conclusions

Findings of fact

1. This proceeding arose upon the application of WOKO, Inc., hereinafter referred to as the applicant, for renewal of license, for the operation of Station WOKO, Albany, New York. Said application was designated for hearing and heard on July 1, 2, 3, 5, and 22, August 3, September 20, 21, and 22, 1943, to secure evidence on the following issues which were set forth in the notice of hearing:

(1) To determine whether the representations and statements made to the Commission or its predecessor, the Federal Radio Commission, by the licensee, its officers, directors, stockholders, or agents, with respect to the ownership or transfer of, subscription to, or consideration paid for the stock of WOKO, Inc., truly and accurately reflect the facts.

(2) To determine all the circumstances and conditions under which the stock WOKO, Inc., has been issued, transferred or assigned.

(3) To determine whether or not the applicant is qualified to continue the operation of Station WOKO.

(4) To determine whether, in view of the facts adduced under the foregoing issues, public interest, convenience and necessity would be served by a grant of this application.

2. The applicant is a New York corporation authorized to issue 1,000 shares of no par value common voting stock. The record holders of such stock and the officers and directors of the corporation at the date of the hearing were:

	Shares	Percent
Harold E. Smith, Sec.-Treas., Dir. & General Manager	255	25½
Raymond M. Curtis, Pres. & Dir.	255	25½
The Press Company, Inc.	250	25
R. K. Phelps	240	24
Deuel Richardson, V. Pres. & Assistant Manager	---	---

3. The principal stockholders in the applicant corporation are also stockholders in The Adirondack Broadcasting Company, Inc., a New York corporation, licensee of Station WABY, Albany, New

York. Said corporation is authorized to issue 200 shares of common voting stock. The distribution thereof and the officers and directors of said corporation as shown by records of the Commission at the date of this hearing were:

	Shares	Percent
Harold E. Smith, Pres., Treas. & Dir	52½	26¼
Raymond M. Curtis, V. Pres. & Dir	52½	26¼
The Press Company, Inc	30	15
O. T. Griffin, Director	15	7½
Rensselaer Polytechnic Institute of Troy	50	25
A. J. McDonald, Sec. & Dir	----	----

4. The offices of applicant corporation and the licensee of Station WABY are located in the same building which is owned by the applicant corporation. The business offices of the two stations are located in the same room; the same department conducts sales for both stations; the studio manager, the woman's program editor, and the orchestra leader and musicians are shared by both stations.

32 5. Station WOKO was formerly located at Poughkeepsie, New York, and was licensed to the Hudson Valley Broadcasting Company, a copartnership composed of Harold E. Smith and Raymond M. Curtis. It shared time with Stations WHEC, WHEB, and WHCS and had no network affiliation. On November 25, 1930, an application was granted to move the station to Albany, New York, and operation in that city was authorized on April 17, 1931, Special Experimental Authority for unlimited time operation of Station WOKO was granted March 24, 1931, and by successive extensions this authority was continued to May 1, 1934, when the station was licensed on a regular basis for such operation.

6. The operation of Station WOKO at Poughkeepsie was a losing venture. Mr. Curtis was unwilling to continue paying his portion of the losses and suggested that the station license be surrendered which Mr. Smith was unwilling to do, and he decided to investigate the possibility of securing a network affiliation. In furtherance of this idea, he went to New York the latter part of 1929, where he interviewed Mr. Sam Pickard, Vice-President in charge of station relations of the Columbia Broadcasting System (hereinafter referred to as Columbia), and made known the desire to secure an affiliation with Columbia for Station WOKO. Mr. Pickard advised him that Columbia would not be interested in said affiliation as long as the station was located at Poughkeepsie and suggested its removal to Albany, and the possibility of securing unlimited time. He stated that if this were done, Columbia would be interested in having Station WOKO as an affiliate.

7. Mr. Smith was not financially able to carry out the suggestions made by Mr. Pickard relative to moving the station to Albany and Mr. Curtis was unwilling to finance the suggested move Therefore, with a view of carrying out Mr. Pickard's suggestions,

Mr. Smith went to Albany and had a conference with Arthur D. Hecox, managing editor and treasurer of The Press Com-
33 pany, Inc. (hereinafter referred to as The Press), newspaper publishers, concerning the contemplated removal of Station WOKO to Albany, financial assistance for such move, and arrangement whereby The Press might secure an interest in the station. During this conference, Mr. Hecox was informed of the conference with Mr. Pickard relative to possible Columbia affiliation and unlimited time operation.

8. Shortly after the conference, referred to above, Mr. Pickard wrote a letter to Mr. O'Neil, Vice-President of the United Hotel Corporation, concerning the possibility of securing studio space for Station WOKO in the Hotel Ten Eyck at Albany, and thereafter, Mr. Smith, with the knowledge of Mr. Curtis, called upon Mr. O'Neil relative thereto. An agreement was reached whereby studio space would be furnished in return for certain broadcast announcements relative the the hotel.

9. A second conference was held in Albany which was attended by Mr. Smith, Mr. Curtis, Mr. Hecox and Mr. Riley, attorney for The Press, at which the question of finances and the possibility of The Press securing an interest in Station WOKO were discussed. The parties tentatively agreed that a corporation to operate Station WOKO be formed with a capital stock of 1,000 shares; that 250 shares of said stock be held in the treasury; that The Press be given an option for one year to purchase the same; that the remaining 750 shares be issued in equal amounts to Mr. Smith and Mr. Curtis; that the proposed corporation arrange to borrow $30,000 (later increased to $35,000) at the National Commercial Bank and Trust Company, Albany, New York, on a note of the proposed corporation, to be endorsed by The Press; and that the stock of Mr. Smith and Mr. Curtis be held by it as collateral security for its endorsement.

10. There followed other conferences to complete the proposed transaction, and Mr. Pickard was kept fully advised by Mr. Smith concerning all matters relating to the proposed move
34 of Station WOKO to Albany. Following the tentative agreement, referred to above, Mr. Smith received a preliminary contract dated August 12, 1930, signed by Mr. Pickard as Vice-President of Columbia, in which it was stated that Columbia service would be made available to Station WOKO, if and when it were moved to Albany.

11. At one of the many conferences held between Mr. Smith and Mr. Pickard concerning the proposed removal of Station WOKO to Albany, Mr. Pickard stated that he would like to have a 25% interest in the station or the proposed corporation. Mr. Smith would not agree to give Mr. Pickard such interest as he and Mr.

Curtis would have only 75% interest in the proposed corporation, and if they gave him a 25% interest, they would lose control thereof, which they were unwilling to do. It was finally agreed that Mr. Pickard would be given a 24% (240 shares) stock interest in the proposed corporation, and that Mr. Pickard would help to secure Columbia affiliation for Station WOKO, furnish, without charge, experienced Columbia engineers to construct the station at Albany, supply a grand piano, and also supply newspaper publicity when the station was opened at Albany. Mr. Pickard was told that said stock would have to be deposited with The Press as collateral for the proposed bank loan. Thus the stock of the proposed corporation, if any when chartered, would be distributed as follows: Mr. Pickard, 24%; The Press, an option for 25%; Mr. Smith, 25½%; and Mr. Curtis 25½%.

12. The Columbia affiliation for Station WOKO was secured and the services of its engineers promised by Mr. Pickard were supplied. When the station was ready to commence operation at Albany, Mr. Pickard caused an advertisement thereof, which cost approximately $1,000, to be published in the Albany Evening News. However, said advertisement was charged to WOKO, Inc. Thereafter Mr. Pickard stated that if WOKO, Inc., would pay this bill, he would give the corporation a $1,500 grand piano, and the matter was so adjusted. Mr. Pickard suggested that the 24% (240 shares) stock interest, which had been promised to him, be issued, 14% to himself and 10% to Lawrence Lowman, another Vice-President of Columbia. All of the dealings concerning this stock were between Mr. Smith and Mr. Pickard.

13. On December 3, 1930, a contract was entered into between The Press and the Hudson Valley Broadcasting Company which embodied the tentative agreement reached between the parties, heretofore referred to. This contract was superseded by one executed on January 15, 1931, by The Press and WOKO, Inc. The latter had been incorporated on December 9, 1930, and authorized to issue 1,000 shares of no par value voting stock. Mr. Smith, Mr. Curtis and Mr. Hecox were the incorporators and also the first directors. Mr. Smith and Mr. Curtis were issued 750 shares (75%) of such stock in equal amounts and 250 shares (25%) were retained in the corporate treasury, subject to the option held by The Press.

14. The 240 shares of stock in WOKO, Inc., transferred to Mr. Pickard, have been issued and reissued on various dates and to various persons, all of which, together with the stock issued to other stockholders and also the stockholders of record as of the date of hearing, are shown as follows:

37 15. The certificates representing the stock (240 shares) in WOKO, Inc., which had been promised to Mr. Pickard were not originally issued in his name and that of Mr. Lowman, because Mr. Smith wanted some assurance that Mr. Pickard would carry out his promise to secure a Columbia affiliation for Station WOKO. Consequently, said stock was, as shown by the foregoing chart, issued as follows:

16. Certificates Nos. 2 and 3 to Mr. Curtis, and Nos. 5 and 6, to Mr. Smith for a total of 240 shares, were endorsed over to Mr. Pickard and Mr. Lowman, 140 shares to the former and 100 shares to the latter as Mr. Pickard wanted some evidence that the promise to give them such stock would be redeemed. This stock was thereafter deposited with The Press as collateral security for its endorsement on the WOKO, Inc., note for $35,000. Thereafter, in order to give Mr. Pickard further assurance that such promise would be redeemed, Certificates Nos. 7 and 9, each for 70 shares, were issued to him and Nos. 8 and 10, each for 50 shares, were issued to Mr. Lowman. These certificates were endorsed to Francke P. Pickard by Messrs. Pickard and Lowman, and thereafter delivered by Mr. Smith to The Press to be held as collateral in lieu of the original certificates.

17. When the applicant corporation paid the note on which The Press was an endorser, all of the stock of the applicant held by it (750 shares) was released and delivered to the record holders as follows: Mr. Curtis, 255 shares; Mr. Smith, 255 shares; Mr. Pickard, 140 shares; and Mr. Lowman, 100 shares. The stock so held by Mr. Pickard and Mr. Lowman was transferred by them to Francke Pickard. Certificates Nos. 7, 8, 9, and 10 were surrendered, and Certificate No. 13 for 240 shares was issued to Mrs. Pickard. On January 30, 1933, Mrs. Pickard endorsed said certificates to Harold E. Smith in compliance with an agreement made between Mr. Pickard and Mr. Smith that he would hold said stock for the Pickards, and on February 2, 1933, said
38 certificate was surrendered and Certificate No. 14 for 240 shares was issued in the name of Harold E. Smith. On the same date, he endorsed said certificate in blank and forwarded it to Mr. Pickard. Mr. Smith continued as record holder of said stock from February 2, 1933, to June 18, 1934, when Certificate No. 14 was surrendered, and on instruction from Mr. Pickard, Certificates Nos. 15, 16, and 17, for 80 shares each, were issued to Francke Pickard, Esspick Corporation and Sampick Corporation, respectively. On July 2, 1934, Certificates Nos. 15, 16, and 17 were surrendered, and Certificate No. 18 for 240 shares was issued in the name of R. K. Phelps.

18. It is the contention of the applicant, through Mr. Smith, that when said Certificate No. 18 for 240 shares of stock in the

applicant was issued in the name of Mr. Phelps that Mr. Pickard stated that such stock was being given to Mr. Phelps; that the officers and agents of the applicant did not know that the Pickards were the beneficial owners thereof, and therefore could not report that fact to the Commission; that when said certificate was issued it was mailed to Mr. Pickard and thereafter business reports, notices of corporate meetings, correspondence relating to said stock, and dividends thereon, with exceptions which will be noted below, were mailed to Mr. Phelps in care of Mr. Pickard as he was considered to be "business manager" for Mr. Phelps. In considering such contention, the testimony of Mr. Smith in support thereof, and the probative value, if any, to be accorded thereto, the facts set forth below should be considered.

19. All dividend checks issued on the 240 shares of stock in the applicant corporation originally promised to be transferred to Mr. Pickard and which has been represented at various times by certificates issued to Mr. Pickard, Mr. Lowman, Mrs. Pickard, the Esspick Corporation, the Sampick Corporation, and Harold E. Smith, and now represented by Certificate No. 18 issued in the name of R. K. Phelps, as heretofore shown, have been
39 received by, and deposited to the credit of Mr. or Mrs. Pickard. All such checks were mailed in accordance with the instructions noted above except one dated July 1, 1935, which was received at the Phelps' residence by Mrs. Phelps who endorsed thereon the name of R. K. Phelps, without his knowledge or consent, and mailed it to Mrs. Pickard with the request that no other such checks be forwarded to Mr. Phelps, and another dated July 11, 1942, which was mailed to Mr. Phelps at the direction of Mr. Pickard, and which upon its being received at the residence of Mr. Phelps was mailed without endorsement by Mrs. Phelps to Mrs. Pickard. The direction of Mr. Pickard to mail said check to Mr. Phelps was issued shortly before his appearance as a witness in Docket No. 5903, in re Station WGST, at which he was questioned concerning his radio interests.

20. With the exception of the check dated July 1, 1935, noted above, and one dated January 3, 1935, hereinafter referred to, all checks for dividends, fourteen (14) in number, on the stock recorded in the name of R. K. Phelps, have been received by Mrs. Pickard who endorsed thereon, without his knowledge or consent, the name of R. K. Phelps as well as her name, and deposited the same to the credit of herself or Mr. Pickard. Such endorsements so made of the name of R. K. Phelps and her name were made in a different style of handwriting.

21. Certificate No. 18, referred to above, was mailed to Mr. Pickard, who in turn mailed it to Mr. Phelps on or about September 22, 1934. It was retained by him until October 20, 1934, when

it was endorsed in blank, at the request of Mr. Pickard and returned to Mr. or Mrs. Pickard. During the latter part of 1934 Mr. Pickard requested Mr. Phelps to go to Lincoln, Nebraska, for the purpose of purchasing for him a radio station located in that city and on or about January 18, 1935, he sent to Mr. Phelps the check dated January 3, 1935, heretofore referred to, for $7,200.00 to be used in connection therewith. This check was de-
40 posited by Mr. Phelps in a special account known as "Richard K. Phelps, Attorney for S. & F. Pickard." Thereafter Mr. Phelps went to Lincoln in response to said request. However, he was unable to purchase the station and so advised Mr. Pickard.

22. On or about March 1, 1935, Mr. Pickard advised Mr. Phelps that he was in need of money and asked him to return the $7,200.00 which he did on the above date. The stock in the applicant recorded in the name of R. K. Phelps, without his knowledge or consent, was so recorded at the direction of Mr. Pickard for the convenience of the Pickards and it has been, at all times since it was so recorded on July 2, 1934, owned by Mr. and/or Mrs. Pickard who have, as shown above, received all of the dividends thereon. This stock, and the dividends thereon were not given to Mr. and/or Mrs. Phelps by Mr. and/or Mrs. Pickard; this fact was admitted by Mrs. Pickard on more than one occasion to Mr. and Mrs. Phelps. This stock and the dividends thereon have never been owned or claimed by Mr. or Mrs. Phelps. When Mr. Phelps learned on information received from the Collector of Internal Revenue that said stock was recorded in his name he protested to the Pickards and demanded that it be transferred to the real owner thereof.

23. On June 28, 1943, a contract was entered into by and between Francke P. Pickard of Miami Beach, Florida, and Mary Belle Redden of Hendersonville, North Carolina, for the sale of 240 shares of the capital stock of WOKO, Inc., held of record by R. K. Phelps for a consideration of $75,000. In this contract Mrs. Pickard represented that the stock certificate (No. 18) for said 240 shares had been endorsed in blank by R. K. Phelps, and that she was on the date of the contract the owner and holder thereof. Said certificate is now held in escrow pending the consent of the Commission to the transfer of said stock.

24. From the very beginning of the transactions between Mr. Smith and Mr. Pickard concerning the stock referred to above, the latter has requested that his stock interest
41 be not disclosed, giving as his reason therefor that it might be embarrassing to him at Columbia and that it was unnecessary to report the stock interest of himself, Mr. Lowman, or other persons or corporations holding the same for him, to the Federal Radio Commission as its rules did not require it, Mr.

Smith testified that he relied on such advice. After the Federal Communications Commission was established, Mr. Smith pointed out to Mr. Pickard that the new application forms required disclosure of all stockholders holding 10% or more of the applicant's stock (as had the Federal Radio Commission forms), and he was again requested by Mr. Pickard not to disclose his stock interest as he did not want such fact made known to the Commission and Columbia. Upon the insistence of Mr. Smith, the 240 shares of stock (Certificate No. 14) then held in his name for Mr. or Mrs. Pickard were transferred and, accordingly, Certificates Nos. 15, 16, and 17 were issued as shown above.

25. On December 10, 1930, the Hudson Valley Broadcasting Company filed an application, signed by Harold E. Smith, with the Federal Radio Commission, requesting authority to assign the license of Station WOKO to WOKO, Inc. Paragraph 6 of said application reads: "State fact showing assignee's financial responsibility with respect to operation of station described in this application." In response thereto it was shown: "Mr. R. M. Curtis and H. E. Smith are principal officers and holders of 75% of stock of new corporation and will be actively connected with station as in the past several years." It will be noted that the applicant failed to disclose in said application the following pertinent facts which should have been made known to the Federal Radio Commission: That WOKO, Inc., was being financed by The Press in that all of the stock in said corporation held of record by Mr. Smith and Mr. Curtis (75%) had been pledged to, and was being held by, The Press as collateral security for its endorsement of the
42 WOKO, Inc., note for $35,000; that such stock would be so held until said note was paid; that The Press held an option to buy the remaining 25% of such stock; and that 240 shares (24%) of the stock held by Mr. Smith and Mr. Curtis was to be assigned to Mr. Pickard or to someone named by him.

26. From February 26, 1932 to February 26, 1934, inclusive, the applicant filed with the Federal Radio Commission five applications for renewal of license, all of which were signed by Mr. Smith as Secretary-Treasurer. In all of said application forms the following information was requested: "Give names and addresses and citizenship of all stockholders owning and/or voting 10% or more of applicant's stock and percentage of stock held by each." In the applications dated February 26, 1932 and July 28, 1932, the response thereto was as follows: "75% of stock owned by Harold E. Smith and Raymond M. Curtis, each owning 37½%. 25% held in treasury unissued. Americans." In the remaining three applications dated January 19, 1933, July 31, 1933, and February 26, 1934, the responses thereto were as follows: "75% of stock owned by Harold E. Smith and Raymond M. Curtis, each owning 37½%.

25% owned by Press Company, Inc." Also, on May 21, 1934, the applicant filed with the Federal Radio Commission an application for a modification of radio-broadcast license, signed by Mr. Smith as Secretary-Treasurer, paragraph 6 of which read as follows: "The applicant's last application for station license is to be considered as a part of this application and the truth of the statements therein contained is hereby reaffirmed except in so far as contrary expressly appears in this application." Nothing to the contrary appeared therein.

In connection with the above responses, disclosure was not made of the following facts: That during all of said period the stock interest of Mr. Smith and Mr. Curtis was 25½% each and not 37½% as represented in said applications and that Mr. Pickard
43 and/or Mrs. Pickard held directly or indirectly 24% interest in the applicant corporation. Furthermore, that during part of said period the Pickard stock was held of record by Mr. Smith; The Press held an option to purchase the 25% treasury stock; and the stock of Mr. Smith, Mr. Curtis and Pickard (amounting to the authorized shares) 75% was hypothecated with The Press as collateral for its endorsement on a note for $35,000 signed by the applicant.

Mr. Smith admitted in this proceeding that representations made to the Federal Radio Commission in various applications between October 23, 1931, and July 1934, and specifically in an application for renewal of license dated July 26, 1932, relative to the stock distribution of the applicant were not true.

27. In an application for renewal of license filed by the applicant with this Commission, dated July 27, 1934, it reported, in response to the request therein for information concerning stockholders holding 10% or more of the applicant's stock: Mr. Smith and Mr. Curtis held 25½% each and The Press 25%. No mention was made of the remaining 24% which had been assigned to R. K. Phelps of July 2, 1934 (Certificate No. 18). On September 21, 1934, the applicant filed an application for modification of license. Paragraph 6 thereof reads as follows: "The applicant's last application for station license is to be considered as a part of this application and the truth of the statements therein contained is hereby reaffirmed except insofar as the contrary expressly appears in this application." Nothing to the contrary appeared therein.

28. From January 29, 1935, to September 28, 1942, the aplicant filed with this Commission a total of 22 applications consisting of 14 renewal applications, 4 applications for construction permits, 2 applications for licenses to cover construction permits, and 2 applications for modification of license, all of which either stated directly or by reference to other applications that the

stockholders of WOKO, Inc., were as follows: H. E. Smith
44 25½%; R. M. Curtis 25½%; The Press Company, Inc. 25%; R. K. Phelps 24%.

29. On November 6, 1933, Mr. Smith testified at a hearing involving an application by WOKO for a modification of its license (Docket No. 1899). In response to a question as to who owned the stock of WOKO, Inc., he answered: "Harold E. Smith, 50%; R. M. Curtis, 25%; and The Press, 25%." On the above date, the records of the applicant corporation disclose that Mr. Smith held of record 495 shares (49½%); Mr. Curtis 255 shares (25½%), and The Press 250 shares (25%). The fact is that Mr. Smith was accommodation holder of 240 shares (24%) of such stock (Certificate 14) for Mr. or Mrs. Pickard. Mr. Smith admitted in the instant proceeding that he had endorsed said certificate in blank on February 2, 1933, the date of issuance; that he had sent it to Mr. Pickard, and that it was held by Pickard at the date of said hearing.

30. It is the contention of Mr. Smith that he had no definite information concerning the identity of the beneficial owner of the 240 shares of stock held of record by R. K. Phelps until he received a letter from Mr. Pickard dated June 15, 1942, in which it was stated: "* * * For personal reasons I transferred my stock to Mrs. Pickard who later requested you to transfer this stock to R. K. Phelps to hold as a matter of convenience to her. * * *"

31. A member of the Law Department visited Station WOKO in December 1942, and requested the permission of Mr. Smith to examine his correspondence with Mr. Pickard relative to the Phelps stock. He asked if there was a file known as "Pickard" file and was advised that such a file had been kept, but it had been broken down, part of the contents placed in other files and part of it destroyed as it was the policy to destroy correspondence after three years. A search of the files disclosed only a copy of a letter from Mr. Smith to Mr. Pickard found in the "Phelps" file.

Thereafter, some such correspondence was found at vari-
45 ous places and Mr. Smith produced part of it which he had found at his farm and his home. Some of the correspondence between Mr. Smith and Mr. Pickard was admitted in evidence in this record. The explanation offered by Mr. Smith at this hearing concerning some of it being found at his home and not in the station's files was: That Mr. Richardson was in charge of the filing; that he (Smith) had received very little correspondence from Mr. Pickard; that he had been confined to his home by illness in 1938 and that such correspondence might have been referred to him there; or that on occasions letters from Mr. Pickard may have been carried home by him as they were of a

Cert.	Shrs.	Date	Issued to	Endorsed	Held by	Re-issue	Red. Hldr.
1	255	12/16/30	Curtis [1]	To Press [2] 1/16/31	Press		
2	70	12/16/30	do [1]	To S. Pickard [3] 1/16/31	do		
3	50	12/16/30	do [1]	To Lowman [4] 1/16/31	do		Smith.
4	255	12/16/30	Smith [5]	In blank	do		
5	70	12/16/30	do [5]	To S. Pickard 1/15/31	do		
6	50	12/16/30	do [5]	To Lowman 1/31/31	do		
7	70	10/23/31	S. Pickard	To F. Pickard 10/28/31	do	For #2	
8	50	10/23/31	Lowman	To F. Pickard 11/4/31	do	For #3	
9	70	10/23/31	S. Pickard	To F. Pickard 10/28/31	do	For #5	
10	50	10/23/31	Lowman	To F. Pickard 11/4/31	do	For #6	
11	250	8/29/32	Press [2]		Curtis	No. #1	Press. Curtis.
12	255	10/29/32	Curtis		F. Pickard	For #7, 8, 9, & 10	
13	240	8/30/32	F. Pickard [7]	To Smith [8] 1/30/33	F. Pickard	For #13	
14	240	2/ 2/33	Smith	In blank 2/2/33			
15	80	6/18/34	F. Pickard	To Phelps 7/2/34	S. Pickard	For #14	
16	80	6/18/34	Esspick Corp. [9]				
17	80	6/18/34	Sampick Corp. [10]	In blank 10/29/34	S. Pickard	For # 15, 16 & 17	Phelps.
18	240	7/ 2/34	Phelps [11]				

[1] Raymond M. Curtis. [2] The Press Company, Inc. [3] Sam Pickard. [4] Lawrence Lowman. [5] Harold E. Smith.
[6] Option exercised. Consideration paid, $25,000 cash.
[7] Francke P. Pickard, wife of Sam Pickard. Stock of Mr. Lowman (C[illegible]ificates 8 and 10) was acquired by Sam Pickard and given to Mrs. Pickard.
[8] This stock held of record by Smith from 2/2/33 until 6/18/34 at the request of Sam Pickard.
[9] Esspick Corporation = Corporations controlled by S. & F. Pickard Certificates.
[10] Sampick Corporation = 15, 16, and 17 issued at directions of S. Pickard.
[11] Richard K. Phelps, brother-in-law of Sam Pickard.

personal nature; and that such letters were inadvertently not returned to the office.

32. In determining the probative value, if any, of the contention of Mr. Smith and his testimony in support thereof that he had no definite information as to the identity of the beneficial owner of the Phelps' stock prior to his being informed in the letter of June 15, 1942, referred to above thereto, the facts shown below should be considered.

33. A number of letters were written by Mr. Smith, Mr. Pickard and other parties concerning the stock held of record by R. K. Phelps, some of which were admitted in evidence in this proceeding, part thereof is here considered. The names of the parties, the date of the letters and excerpts therefrom are shown below:

Smith to Pickard, 9/22/34, enclosing Certificate No. 18 issued to R. K. Phelps.

Biller[1] to Smith, 3/3/38. "I have been instructed by Mr. Sam Pickard to write to you to advise me the total amount of dividends paid to Mrs. Francke Palmer Pickard by your company during the calendar year 1937."

Smith to Pickard, 6/17/38. "At a director's meeting yesterday a dividend of $14.00 per share was declared. Enclosed is a check covering. While it may not pay off the mortgage on the old home, it ought to help a bit!"

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Pickard to Smith, 10/8/38. "My chief worry is that we might lose CBS to a better station in that locality. I wonder if you and Curtis should go in and try to get our contract extended for a couple of years longer. If you want I will feel this situation out also."

Smith to Pickard, 10/12/38. "Of course, anything you can do to assist in connection with WOKO will be merely protecting your own interests as well as the corporation's."

Pickard to Smith, 7/7/39. "* * * As I recall, you have always been consistent with a dividend check about this time of year. * * * How about declaring out what you can spare? About all the small stockholder can do is to let out a little squawk occasionally. * * * You should think twice before spending beyond our capital reserve. * * *"

Smith to Pickard 12/18/39. This letter refers to an inquiry from the Internal Revenue Officer about dividends paid on the Phelps' stock. "It would be somewhat embarrassing to reveal the actual owner of this stock, but we certainly don't want to get involved in any investigation by the Internal Revenue Service."

Pickard to Smith 12/19/39. "* * * Let me know * * * when and how much you are going to be able to do on dividends."

[1] Biller and Snyder, New York accountants for Pickard.

Smith to Pickard 12/29/39. "In regard to your stock now in the name of R. K. Phelps, as long as this matter has been placed before the Collector of Internal Revenue of Kansas City, don't you think it might be just as well to straighten the thing out at this end and transfer the stock to the name of Francke Pickard. * * *"

Biller to Smith, 12/21/39, "At the request of Mr. Sam Pickard, we have replied to the inquiry of the Collector of Internal Revenue of Kansas City, and enclose herewith a copy of our reply."

Biller to Collector of I. R., 12/21/39. "Although Mr. R. K. Phelps is the owner of record of the stock of WOKO,
47 Inc., in question, that stock is held by and owned by Francke Palmer Pickard. * * * The stock in question was recorded in the name of R. K. Phelps for convenience only. He was never the owner of the stock, nor did he ever receive any of the dividends. All dividends were received by Francke Palmer Pickard. * * *"

Smith to Pickard, 1/12/40. "I feel sure you will be glad to get the enclosed. The size of the dividend is not too bad when you considered that we built Radio Center only last year."

Smith to Pickard, 5/7/40, requesting Mr. Pickard's assistance concerning Columbia contract. "You can do a lot in this situation and I urge you to give us your help, in self interest, and for the sake of the station."

Pickard to Smith, 5/17/40. "I have a substantial interest in the business and naturally feel it a constant loss not having the opportunity to see you more often and learn more intimately what is going on. I am glad to see our statements reflecting improvement and hope that we can soon be out of debt as I feel that in these times a large back-log of reserve is essential."

Smith to Pickard, 5/21/40. "You mentioned your substantial interest in the affairs of WOKO. That is quite correct and applies as well to Raymond Curtis, The Press Company, Inc. and myself."

Smith to Pickard, 1/2/41. "At the annual directors meeting a dividend of $27.50 per share was declared, payable January 2, and I am enclosing a check for $6,400. Have you been able to do anything in regard to the transfer of WOKO stock? With the Commission tightening up its regulations and inquiring into every last detail, I feel very strongly that this matter should be taken care of without further delay."

Conclusions

1. From approximately October 23, 1931, until the present time, Sam Pickard and/or Francke Pickard, his wife, or
48 corporations which they controlled, were the real owners of

240 shares of the common stock of the applicant corporation, amounting to 24% of the outstanding capital stock. During this time they received all dividends paid on this stock.

2. The applicant corporation, however, in reporting to the Federal Radio Commission and to this Commission the names of its stockholders and the extent of their holdings, concealed the fact that the Pickards held this stock interest, and represented that these 240 shares were held by others. This misrepresentation and concealment was in violation of Section 10 of the Radio Act of 1927, Section 308 (b) of the Communications Act of 1934, and the Rules and Regulations of both Commissions.

3. In administering its statutory duties under the Communications Act of 1934, this Commission is called upon to scrutinize carefully the applicant's qualifications, as set fort', in Section 308 (b); to determine whether the citizanship requirements of Section 310 have been met; to inquire whether the applicant or parties in interest have been adjudged guilty of violating the anti-trust laws as set forth among other provisions of Section 311 and Section 313. In deciding whether the proposed operations would serve "public interest, convenience or necessity," consideration must be given to the character, background, and training of all parties having an interest in the proposed license. It is, therefore, apparent that the performance of this statutory duty requires full information about each of an applicant corporation's stockholders. The failure in this case to disclose that the Pickards were stockholders in WOKO, Inc., prevented a determination of their qualifications and fitness under the Communications Act.

4. This concealment was not caused by a slight inadvertence nor was it the result of an isolated incident. On the contrary, the testimony clearly establishes that the deception was carried on at Pickard's instigation for approximately 12 years. Pickard was not the only person responsible. He was aided from
49 the inception of the scheme by Harold E. Smith, who has been a principal in WOKO since it was established, and who, during the entire period, has been the General Manager in complete charge of the station's operations as well as an officer and director of the corporation. Together, Smith and Pickard hold 49½% of the stock.

During this 12-year period, WOKO, Inc., filed numerous applicatons and statements with both the Radio Commission and this Commission, all of which failed to disclose the name of the Pickards as stockholders or any reference to their interest in the corporation. Moreover, in corroboration of these misrepresentations, Smith appeared on behalf of the applicant corporation at various hearings affecting WOKO and furnished false testimony to both

Commissions regarding the identity of WOKO stockholders, and the number of shares held by each, so as to conceal the Pickard holdings.

5. The representations made in this proceeding, that the officers of the applicant corporation, particularly Harold E. Smith, its secretary-treasurer-manager, and Raymond M. Curtis, its president, did not have definite information concerning the identity of the beneficial owner of 240 shares, amounting to 24% of the capital stock of the corporation, listed under the name of R. K. Phelps from July 1934 until the date of this proceeding, raise further questions as to the extent to which the Commission may with assurance accept statements of this applicant. The evidence shows that Smith continued to correspond with Pickard as an interested principal in the operation of WOKO during this entire period, that he had no such correspondence with Phelps in whose name the Pickard stock was listed. There is no reasonable doubt but that he had definite information as to the real ownership of the stock listed in the name of Phelps. The president of the applicant corporation, Raymond M. Curtis, who was also a director, has been long associated with Smith and was familiar with the manner in which Pickard obtained his interest in WOKO. The capital structure of the applicant corporation was so arranged and maintained that Curtis and Smith together should always hold a controlling interest. There were only four stockholders all told. Of these, Smith, Curtis and Pickard held 75% of the stock. The record shows that Pickard took a continuing interest in the business of WOKO and it is equally clear that Phelps took no interest at all in the station. Under these circumstances, the Commission would be credulous indeed to accept without question representations that the directing officers of the applicant corporation did not know the identity of the real owner of the stock listed and reported as owned by R. K. Phelps over an eight year period from 1934 to 1942.

6. The applicant cannot deal with the Commission at arm's length, and the "morals of the marketplace" cannot be a standard of candor under the Communications Act of 1934. In the Matter of Van Curler Broadcasting Corp., 9 F. C. C. 92, 101 (1942); In the Matter of the Mayflower Broadcasting Corp., 8 F. C. C. 333, 338 (1940); In the Matter of John H. Stenger, 8 F. C. C. 434, 444 (1940). In the performance of our statutory duties we are called upon to determine whether the operation of proposed stations or the continued operation of stations previously licensed would serve public interest. In so doing, we are forced to rely to a great extent upon the representations made in applications, in statements, and in testimony offered at hearings. It is significant that under the

provisions of the Act, a station license is subject to revocation for false statements in an application. (Section 312 (a)), Communications Act of 1934, as amended.

7. From a consideration of all the material facts found in the record of this hearing, the Commission has concluded that the applicant cannot be entrusted with the responsibilities of a licensee.

The Commission, therefore, finds that a grant of the application for renewal of license for the operation of WOKO by the applicant corporation would not serve public interest, convenience, or necessity and therefore should be denied.

51

FEDERAL COMMUNICATIONS COMMISSION,
T. J. SLOWIE,
Secretary.

Adopted, November 9, 1944.

* * * * *

Before Federal Communications Commission

Exceptions and request for oral argument

Comes now WOKO, Incorporated, applicant in the above-entitled cause, by its attorneys, George O. Sutton, Michael D. Reilly and Samuel A. Jacobs, and files its exceptions to the Proposed Findings of Fact and Conclusions of the Commission in the above proceedings.

I. PRELIMINARY STATEMENT

This proceeding arose upon an application dated September 29, 1942 of WOKO, Incorporated for renewal of license for operation of radio broadcast station WOKO, Albany, New York. On January 12, 1943 the Commission designated the application for hearing, and by notice dated January 26, 1943, specified the following issues to be determined at the hearing:

"1. To determine whether the representations and statements made to the Commission or its predecessors, the Federal Radio Commission, by the licensee, its officers, directors, stockholders, or agents, with respect to the ownership or transfer of, subscription to, or consideration paid for the stock of WOKO, Inc., truly and accurately reflect the facts.

"2. To determine all the circumstances and conditions under which the stock of WOKO, Inc., has been issued, transferred or assigned.

52 "3. To determine whether or not the applicant is qualified to continue the operation of Station WOKO.

"4. To determine whether, in view of the facts adduced under the foregoing issues, public interest, convenience and necessity would be served by a grant of this application."

The hearing was conducted before a duly qualified official of the Commission on July 1, 2, 3, 5, 22, August 3, September 20, 21, 22, 23, 1943.

II. EXCEPTIONS

1. Exception is respectfully taken to all of the Proposed Findings of Fact and Conclusions of the Commission in that the Commission sets forth only the facts supporting its conclusions.

There is much uncontradicted evidence in the record which establishes facts directly contrary to the facts found by the Commission and which when weighed against the facts found by the Commission lead to entirely different conclusions. The Commission evidently did not consider these facts or else it would have reached different conclusions. In various places throughout the Proposed Findings of Fact and Conclusions of the Commission, the Commission sets forth that such-and-such is the contention of the applicant but makes no express finding that the contention did not have a reasonable basis, nor does the Commission state the undisputed facts which tended to support the contention at the particular times in question. The Commission also sets forth many excerpts from documents and correspondence which, when considered alone and without considering the whole document, lead to erroneous conclusions. The Commission also failed to include excerpts from other related documents which, if considered, would have led to different conclusions than those reached by the Commission.

The Commission nowhere finds that WOKO has not been operated in the public interest. Indeed the uncontradicted
53 testimony is that it has been so operated. The Commission's proposed finding is simply that on account of earlier misdeeds of its officers the applicant cannot be trusted to operate in the public interest in the future. The Commission nowhere imputes to the applicant or its officers any mercenary purpose, nor does it find that the suppression of information respecting the beneficial ownership of the stock in question influenced or affected any official act of the Commission, or hampered it in the performance of its duties.

Cognizance is taken of the fact that the rules for appraisal of testimony are properly based on the theory of weighing the testimony and are not predicated on the theory that the testimony must be so overwhelming as to compel a particular conclusion. Nevertheless, the Commission's attention is called to the fact that it should not be unmindful of the type of sanction vested in it with respect to a violation of the nature charged in these proceedings. The sanction is, in effect, a revocation of license which is synonymous with capital punishment, and hence in

weighing the testimony some additional amount of tolerance must be allowed in balancing the scales of conflicting evidence. It would seem that above all the conclusions to be drawn from the evidence must be related to motives for misbehavior.

The Commission will find that in the chronological stream of events related by witnesses, there is a different regulatory impact on the early part of the stream than on the latter part. The Commission must find that there was no such duty of revealing and disclosure at the inception of the relationship of Pickard's stockholdings, as may well have existed at a later date. At the worst, the evidence would indicate that Pickard, rather than the licensee, may have had a motive for desiring an anonymity as to his interest, but it is clear and undisputed in the evidence that the motive was not one for the benefit of WOKO or of the owners thereof. Such an anonymity had no relationship
54 to taxes, profits or any other conceivable regulation of the FCC. The motive for such anonymity derived out of relationship of Pickard to Columbia Broadcasting System. The Commission must find such motive understandable and plausible. It should not be impertient to suggest at this time that the motive for an anonymity was prompted by the absence of proper regulations with respect to intra-licensee ownerships, namely, officers, stockholders or staff members of a network having stock or other relationships to any individual station.

Although much of the evidence would indicate that Phelps, a man of distinction, was blind to any possible desire of an anonymity as to the Pickard relationship to WOKO, there is, nevertheless, evidence to show some confusion as to this aspect of the situation. Reference is made to two most significant acts, one the receipt of a check in the sum of $7,200 deposited to his account, and two the admitted signature of Phelps on the stock certificate.

But the issue of fact before this Commission does not rest solely on the relationship between Pickard and Phelps. In fact, that relationship, to a great extent, is entirely irrelevant since the issue of fact really is whether WOKO had sufficient knowledge to create a technical violation of later regulations, which technical violation might conceivably invoke the sanction of a loss of all rights. Viewed against the total absence of any conceivable motive on Smith's or WOKO's part to be hurtful in any way to the FCC or to gain any personal advantage, there is enough in the record to find that to a layman like Smith the relations between Phelps and Pickard were themselves of such a confused nature that there was no inevitable duty on Smith's part to come to the conclusion that there was any intentional or unintentional actual concealment of the true facts. An objective

reading of the testimony can well lead to the conclusions that there was at the least real confusion as to the status of the ownership, which status must be appraised in relation to profits, dividends, voting powers, depositary of stock certificates, power of transfer, etc.

55 It is suggested that the Commission in appraising the exceptions, bear in mind the motives, the incapacity for enrichment, the absence of additional profit or tax saving and of any conceivable benefit through any action of the Commission vis-a-vis the alleged anonymity, and above all the Commission should bear in mind, consistent with its past policy, that in cases of clear deception, on the issue, such as the procuring of a license, the Commission has properly been loath to destroy a licensee for any violations of regulations on disclosure in cases of more serious import than any that can conceivably be found in the instant case.

SPECIFIC EXCEPTIONS

2. Exception is taken to the findings contained in paragraph 1 of the Commission's Proposed Findings of Fact and Conclusions in that the Commission fails to include the order of Commissioner Paul A. Walker, dated June 30, 1943, which was as follows:

"It appearing that the hearing issues now designated by the Commission are broad enough to permit, within reasonable bounds, the introduction of evidence suggested by the proposed issue of the petitioner and that the requested amendment and enlargement of the hearing issues is therefore unnecessary."

Counsel for WOKO had previously petitioned the Commission (filed June 26, 1943) to amend and enlarge the issues theretofore set forth. A request had been made to insert an issue with respect to the nature, character and extent of the program service rendered by WOKO in the past as well as that which would be rendered in the future. Commissioner Walker ruled that evidence might be adduced along that line without the necessity of inserting another issue. Therefore, when the Commission in its proposed findings of fact failed to include this interpretation

56 of the issues, it more or less foreclosed the consideration of evidence of this character. In fact, nowhere in the Proposed Findings of Fact and Conclusions of the Commission is there any digest of the evidence which was adduced on this subject. (T. 960-992. App. Ex. 58, 61.)

3. Exception is taken to the findings contained in paragraphs 3 and 4 of the Commission's Proposed Findings of Fact and Conclusions in that the Commission sets forth the stockholders and directors of the Adirondack Broadcasting Company, licensee of

Station WABY. The Adirondack Broadcasting Company was not a party to the hearing and the inclusion of this data is entirely unnecessary and irrelevant to the instant proceeding.

4. Exception is taken to the findings contained in paragraph 15 of the Commission's Proposed Findings of Fact and Conclusions in that the Commission finds that the reason for the failure to issue the Pickard stock immediately on the formation of the corporation was due to Smith's desire to await a permanent contract with Columbia, whereas the undisputed fact is that all the issued stock of the corporation was pledged with the Press Company against its guaranty so that none of it could be issued to Pickard, whether or not the permanent Columbia contract was obtained, unless it was first taken out of the pledge. (T. 39, 42, 46, 47, 48, 364, 365, 402, 939, 940.)

5. Exception is taken to the findings contained in paragraph 17 of the Commission's Proposed Findings of Fact and Conclusions. In paragraph 17 the Commission briefly states that on January 30, 1933, Mrs. Pickard endorsed 240 shares of stock, Certificate No. 13, to Mr. Smith to hold for the Pickards. Nowhere in this finding is there any finding with respect to the reasons for such transfer. The uncontradicted evidence of Mr. Smith is that this request was the result of his urging Mr. Pickard to permit the ownership of the stock to be revealed to the Commission. (T. 66, 67, 69, 74, 439, 441, 442, 443, 446, 447.)

57 The Commission further fails to find that when Stock Certificate No. 14 was broken up into three separate parts in June 1934, this was the result of statements by Mr. Smith that he would reveal the true ownership unless Mr. Pickard did so. (T. 76, 77, 129, 130, 484.)

The bare finding that on July 2 1934, Certificates 15, 16, and 17 were surrendered and Certificate 18 for 240 shares was issued in the name of R. K. Phelps, without the Commission finding the other related facts in connection therewith, is erroneous and prejudicial to the applicant.

6. Exception is taken to the findings contained in paragraph 19 of the Commission's Proposed Findings of Fact and Conclusions in that the Commission fails to find that Smith did not know that Pickard was the owner of the stock standing in Phelps' name and that the deliberate forgeries of Phelps' endorsement on the dividend check by Phelps' wife and Pickard's wife, were committed with the deliberate purpose of concealing from Smith and the other officers of WOKO the fact that Phelps was not the beneficial owner of the stock, and that those forgeries accomplished their designed purpose. And further, in that the Commission failed to find that those forgeries conclusively rebut any charge that Smith was a party to the concealment of the true

ownership of the Phelps stock, for if he were the forgeries would have been unnecessary. (T. 77, 78, 79, 89, 90, 91, 93, 104, 105, 106, 136, 137, 138, 139, 140, 146, 147, 153, 157, 158, 160, 164, 167, 168, 169, 170, 212, 213, 214, 215, 216, 244, 245, 281, 282, 284, 288, 312, 316, 320, 322, 323, 324, 325, 328, 329, 330, 332, 335, 339, 340, 455, 487, 488, 564, 565, 566, 567, 568, 578, 590, 591, 597, 703, 704, 708, 715, 723, 724, 725, 726, 727, 732, 741, 742, 748, 772, 779, 780, 782, 804, 806, 818, 819, 820, 836, 837, 858, 859, 860, 861, 866, 870, 871, 872, 873, 874, 878, 880, 881, 882, 884, 885, 886, 887, 890, 900, 901, 903, 905, 906, 915.) (App. Ex. 24–A, 34–47.)

7. Exception is taken to the findings contained in paragraphs 21 and 22 of the Commission's Proposed Findings of Fact and Conclusions in that the Commission fails to find the undisputed fact that neither Smith nor any other officer of WOKO
58 knew until July 1942 that the Phelps' stock certificate had been endorsed in blank by Phelps and delivered to Pickard. (See previous citations here left out for brevity.)

8. Exception is taken to the findings contained in paragraph 24 of the Commission's Proposed Findings of Fact and Conclusions. The Commission finds: "After the Federal Communications Commission was established, Mr. Smith pointed out to Mr. Pickard that the new application forms required disclosure of all stockholders holding 10% or more of the applicant's stock (as had the Federal Radio Commission forms), and he was again requested by Mr. Pickard not to disclose his stock interest as he did not want such fact made known to the Commission and Columbia." The Federal Communications Commission was not established until July 1, 1934, and the Phelps' stock was issued July 2, 1934. The proof is undisputed that since that time Phelps has been consistently reported as the owner of the stock, and it is likewise admitted by both Pickard and Phelps that until 1942 neither of them ever advised Smith or WOKO that Pickard had any interest in the stock. It follows that Pickard could not have requested any concealment of ownership after the establishment of the Federal Communications Commission.

9. Exception is taken to the findings contained in paragraph 30 of the Commission's Proposed Findings of Fact and Conclusions. The evident conclusion drawn by the Commission from the statement quoted from the letter of June 15, 1942, from Mr. Pickard to Mr. Smith (App. Ex. 24) is that Mrs. Pickard told Mr. Smith at the time the stock was transferred from her to Mr. Phelps that it was to be held by him for her convenience. Pickard in this letter attempted to detail the evidence he gave in the WGST hearing. He does not now affirm that that evidence was true. Moreover he was stating a fact which was patently hearsay, on its face. What probative force can be given

59 an unsupported hearsay statement by Pickard, especially when the original author of the supposed statement was his wife?

10. Exception is taken to the findings contained in paragraph 33 of the Commission's Proposed Findings of Fact and Conclusions. The excerpts of letters as set forth in this paragraph is an erroneous method and manner of considering such letters as evidence. The paragraph itself states that only parts of the letters are here considered. If this be true, and the Commission has not considered all of the letters, circumstances and facts as contained in the record, this is an admission of error, as particularly set out in the first sentence of this paragraph. If a document be admissible at all, then all pertinent parts of that document must be considered in arriving at a conclusion to be drawn from that document. The same applies to the oral evidence as set forth in factual testimony in the record. (Exs. 14, 14A to 14F.)

11. Since this exceptor has already filed proposed findings including conclusions to be drawn therefrom, and since this document is a part of the record, such Proposed Findings of Fact and Conclusions are specifically incorporated herein by reference. Such findings are not physically copied herein because they are already on file; however, they are nevertheless made a part hereof the same as if such findings were physically included herein and attached hereto. Exception is therefore taken to the failure of the Commission to find in accordance with such findings and the conclusions drawn therefrom.

12. Exception is also taken to the failure of the Commission to apply any statute of limitations in its consideration of the questions at issue in this proceeding.

13. Exception is taken to each of the seven conclusions reached by the Commission. It has heretofore been pointed out that only portions of the material evidence have been set out and considered by the Commission and therefore the conclusions are based on portions of the pertinent facts rather than on all of the facts

60 as contained in the record. Only by a consideration of all of the pertinent evidence can a proper conclusion be drawn. It is error on the part of any fact-finding body to fail to give proper consideration to all pertinent facts.

14. It is submitted that had the Commission given proper consideration to all the pertinent facts, it would have concluded as follows:

(1) Although some of the early application forms used by the Federal Radio Commission did not require the disclosure of all persons owning 10 percent or more of the stock of a licensee corporation, nevertheless, in all fairness, the licensee of WOKO, Inc., should have disclosed to the Commission the plan of Mr. Pickard

to acquire a 24 percent interest in the licensee corporation at the time the corporation became the licensee of this station in December 1939, and also the financial arrangements with The Press Company.

(2) This failure to disclose to the Federal Radio Commission the anticipated 24 percent interest of Mr. Pickard in the licensee corporation, WOKO, Inc., was the result of a direct request by Mr. Pickard not to do so. Smith and Pickard did not stand on an equal footing. Pickard's former high public office and his position as a vice president of Columbia make that self-apparent. Pickard knew from his own experience on the Commission the importance of a complete disclosure of all stock interests and financial arrangements when applying for licenses or renewals. Smith, the layman, could not be expected to realize the serious consequence of what seemed to him a simple matter of obliging a friend. He cannot in all fairness be held to the same standard as Pickard could and should be held.

(3) After the financial obligations incurred as a result of the removal of the station to Albany were repaid, Mr. Smith made several requests of Mr. Pickard to permit the disclosure of the 24 percent interest held by Mr. Pickard, his wife, or their per-
61 sonal holding companies in WOKO, Inc. These unheeded requests finally resulted in a notification by Mr. Smith to Mr. Pickard that the new forms prescribed by the Commission definitely required the disclosure of Mr. Pickard's interest, and that unless Pickard's stock interest was eliminated by a transfer of the stock, Smith would disclose the interest of Mr. Pickard to the Federal Radio Commission.

(4) The transfer of the 24 percent interest in WOKO, Inc., to R. K. Phelps in July 1934 was represented to Mr. Smith by Mr. Pickard as a bona fide transaction and a gift by Mr. and Mrs. Pickard of their interest to their brother-in-law, and was the direct result of the insistence on the part of Mr. Smith of the necessity of disclosing this interest to the licensing body, unless that interest was eliminated. At the first opportunity thereafter, Mr. Smith, on behalf of the licensee corporation, reported this stock ownership and has continuously done so as being in the name of R. K. Phelps.

(5) Subsequent to July 1934 Mr. Pickard represented to Mr. Smith that he was the representative or manager of this stock for his brother-in-law Mr. Phelps, and intended to look out for the interests of his brother-in-law in the affairs of the station. Consequently, upon the request of Mr. Pickard, business statements, notices of stockholders' meetings, dividends, and other formal notices were sent to Mr. Phelps in care of Mr. Pickard. All dividends of the station at all times were made out to the stockholders of record, including Phelps.

(6) To say the least, by the process of concealment, half truths, the formation of personal holding corporations, and even forgeries, practiced upon Smith by the Pickards, Smith had been deliberately placed in such a state of confusion as to the actual beneficial ownership of the Phelps-Pickard stock that he did not realize the actual situation in regard thereto. Phelps, the only person other than the Pickards, who knew the exact reason for his being a stockholder of record in the station, and of the assignment
62 in blank of his stock, could have relieved this state of confusion, but he did not. For some strange reason he never communicated with either WOKO or any of its officers, although he knew that WOKO was reporting to the Treasury Department the dividend checks made payable to him.

(7) There is no evidence that Mr. or Mrs. Pickard at any time controlled, or attempted to control, the conduct, management or operating policies of the station. The station's conduct with regard to the public has never once been the subject of criticism by the Commission, and its treatment of forward-looking minority movements has been most progressive and enlightened. It has maintained a true public forum and the public would suffer a grievous loss were it discontinued. The situation calls for disciplinary measures rather than a death sentence.

(8) The origin of the offenses charged, whether of omission or commission, date back more than 13 years. They were committed without any motive of material gain or other mercenary motive and have resulted in no financial advantage to the applicant or to any of its officers. Through good fortune, the offenses have not in any way hampered or affected the Commission in the performance of its functions.

(9) A consideration of the entire record justifies the conclusion that the granting of the pending application for renewal of the license of WOKO, Inc., File No. B1-R-258, Docket No. 6486, will serve the public interest, convenience, and necessity.

63 REQUEST FOR ORAL ARGUMENT

Oral argument on behalf of WOKO, Inc. in Docket No. 6486 is hereby respectfully requested.

Respectfully submitted.

WOKO, INC.,
By GEO. O. SUTTON,
MICHAEL D. REILLY,
SAMUEL A. JACOBS,
Its Attorneys.

By GEO. O. SUTTON,
1030 National Press Building, Washington, D. C.

FEBRUARY 15, 1945.

Before Federal Communications Commission

Order

(March 27, 1945)

At a session of the Federal Communications Commission held at its offices in Washington, D. C. on the 27th day of March 1945:

The Commission, having under consideration the proceedings upon the application of WOKO, Incorporated for the renewal of license of Station WOKO, Albany, New York; and

It Appearing, That "Proposed Findings of Fact and Conclusions" of the Commission were issued on November 9, 1944; that Exceptions thereto were filed on behalf of WOKO, Incorporated, and that Oral Argument was held thereon on March 14, 1945; and

The Commission, having considered the entire record, the aforesaid Findings of Fact and Conclusions of the Commission, the Exceptions thereto, the Briefs, and the Oral Argument, and being fully advised in the premises;

It is Ordered, That the Proposed Findings of Fact and
64 Conclusions of the Commission heretofore issued, Be, And The Same Are Hereby Made A Part Hereof By Reference And Adopted As The Final Findings Of Fact And Conclusions Of The Commission; and

It is Further Ordered, That the application for the renewal of license of Station WOKO, Be And The Same Is Hereby Denied effective on April 27, 1945.

FEDERAL COMMUNICATIONS COMMITTEE,
T. J. SLOWIE, *Secretary.*

* * * * *

Before Federal Communications Commission

Petition for "special order of the Commission" for authority to continue operation of Station WOKO

Comes now WOKO, Incorporated, licensee of Radio Station WOKO, Albany, New York, by its attorney, George O. Sutton, and respectfully petitions the Commission to issue a "special order" for the continued operation of Station WOKO by WOKO, Incorporated, beginning at 3:00 A. M., E. S. T., April 27, 1945, and continuing until such time as the Commission may consider and act upon a petition for rehearing in the above cause, which petition will be filed by this petitioner on or before twenty days after April 27, 1945.

In support of this petition it is respectfully shown unto the Commission that:

1. On March 27, 1945, the Commission announced its order in Docket No. 6486, File No. B1–R–253, adopting the proposed findings heretofore made in this matter and ordering "that the application for the renewal of license of Station WOKO be, and the same is hereby denied effective on April 27, 1945." Under the terms of this order and the rules of the Commission this licensee will not have any authority to operate Station WOKO subsequent to 3:00 A. M., E. S. T., April 27, 1945.

2. Section 405 of the Communications Act of 1934 reads as follows:

65 "Sec. 405. After a decision, order, or requirement has been made by the Commission in any proceeding, any party thereto may at any time make application for rehearing of the same, or any matter determined therein, and it shall be lawful for the Commission in its discretion to grant such a rehearing if sufficient reason therefor be made to appear: Provided, However, That in the case of a decision, order, or requirement made under Title III, the time within which application for rehearing may be made shall be limited to twenty days after the effective date thereof, and such application may be made by any party or any person aggrieved or whose interests are adversely affected thereby. Applications for rehearing shall be governed by such general rules as the Commission may establish. No such application shall excuse any person from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. In case a rehearing is granted, the proceedings thereupon shall conform as nearly as may be to the proceedings in an original hearing, except as the Commission may otherwise direct; and if, in its judgment, after such rehearing and the consideration of all facts, including those arising since the former hearing, it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission may reverse, change, or modify the same accordingly. Any decision, order, or requirement made after such hearing, reversing, changing, or modifying the original determination, shall be subject to the same provisions as an original order."

The language of Section 405 permits WOKO, Incorporated, to have twenty days after the effective date of the Commission's order in this case, to wit: April 27, 1945; to file a petition for rehearing. Such petition will be filed in due course by this petitioner.

66 Section 405 specifically sets out that the additional time permitted for the filing of a petition for rehearing shall not

automatically stay or postpone the effective date thereof *without the special order of the Commission.* Thus, the continued operation of Station WOKO after 3:00 A. M., E. S. T., April 27, 1945, is left to the discretion of the Commission. Nothing in the statute prevents the Commission from issuing a special order for the continued operation of Station WOKO until the statutory time for filing a petition for rehearing, and a consideration thereof by the Commission, has expired. However, unless such a stay or special order for the continued operation of the station after 3:00 A. M., E. S. T., April 27, 1945, is issued, the "death sentence" will be carried into effect before the time has expired for perfecting and exhausting all statutory remedies.

3. The Court of Appeals in the case of Red River Broadcasting Company v. Federal Communications Commission, 98 F. 2nd 282, decided that it was necessary for an appellant to exhaust all administrative remedies before proceeding with an appeal to that court. Therefore, this petitioner cannot avail itself of the statutory rights of appeal provided for by Section 402 of the Communications Act until it has filed, and the Commission has passed upon, a petition for rehearing as provided for in Section 405. The same question was discussed in the Black River case and the same procedure was affirmed in that case.

4. This petitioner submits that it should not be "executed" at 3:00 A. M., E. S. T., April 27, 1945, and the authority to operate subsequently thereafter be denied because of the variance in the language as contained in Sections 402 and 405 and the decisions of the Court of Appeals with regard to procedure. No good will be accomplished by such procedure. Considerable harm and damage will be caused to this petitioner if it is forced to cease operation at 3:00 A. M., E. S. T., on April 27, 1945 and before the statutory remedies have been exhausted. It is sub-
67 mitted that nowhere in the decision of the Commission has the Commission decided that the program material broadcast by the station was not in the public interest, and to deprive the listening audience in Albany, New York and environs of the service of WOKO will serve no useful purpose.

5. A "special order of the Commission" for the continued operation of WOKO subsequent to 3:00 A. M., E. S. T., April 27, 1945 will not extend the time within which this petitioner may file a petition for rehearing in this cause. In fact, this petitioner hereby stipulates that such petition for rehearing must be filed within twenty days after 3:00 A. M., E. S. T., April 27, 1945.

6. Since March 27, 1945 this petitioner and its counsel have diligently endeavored to find means and ways of reconstructing the present licensee corporation or constructing a new corporation

which would come within the terms of the Commission's decision. There has been no dilly-dallying with the matter and no dilatory tactics have been resorted to and will not be resorted to by this petitioner. However, on account of the seriousness of the decision, every move which this petitioner has made in attempting to reconstruct the corporation has consumed time. Hence, it has not been possible to submit a petition for rehearing to the Commission "of all the facts, including those arising since the former hearing," as contemplated by Section 405 of the Act. Petitioner does, however, expect to reconstruct and reorganize the licensee corporation and/or a new corporation and include in its petition for rehearing a statement of facts which have "arisen since the former hearing" and which it believes will meet the requirements of the Commission. Procedural steps in the reorganization and reconstruction of the present corporation, however, are governed by time limits which are not wholly within the control of this licensee corporation and hence it is necessary to rush negotiations and proceedings even more than would normally occur in order that the petition for rehearing may contain definite, bona fide pro-
68 posals and accomplishments. Counsel believes that it is possible to complete these even before twenty days subsequent to April 27, 1945, and will diligently attempt to file such petition at the earliest possible moment.

7. There are no parties to this proceeding other than the Commission and the applicant, and hence no prejudice can occur as a result of the granting of the order herein requested. On the other hand, considerable prejudice can result to this petitioner and a severe and useless hardship worked upon the listening public of Albany, New York unless this order is granted. The Press Company was permitted to participate in the oral argument and a copy hereof is being served on its counsel.

8. Petitioner respectfully suggests that the principal purpose of this petition is to permit the continued operation of Station WOKO by WOKO, Incorporated, under the same terms of operation as heretofore authorized and until such time as a petition for rehearing may be filed, considered and acted upon by the Commission. In making this suggestion, petitioner requests that the Commission consider the substance, rather than the form, of not only this petition, but of the authority herein requested.

Wherefore, it is respectfully prayed that the Commission issue a "special order" authorizing Station WOKO to be operated by WOKO, Incorporated, beginning at 3:00 A. M., E. S. T., April 27, 1945, under the same terms and conditions of operation as heretofore authorized, and for a period which will permit the filing of a petition for rehearing in this cause within twenty days after

3:00 A. M., E. S. T., April 27, 1945, and the subsequent consideration and decision thereon by the Commission.

Respectfully submitted.

WOKO, INCORPORATED,
By GEO. O. SUTTON,
1030 National Press Bldg., Washington, D. C.

APRIL 20, 1945.

* * * * *

69 Before Federal Communications Commission

Opinion and Order

This matter arises upon consideration of a petition filed by WOKO, Incorporated, licensee of Station WOKO, Albany, New York, for a special order of the Commission granting authority to continue operation of that station after April 27, 1945.

On March 27, 1945, the Commission announced the adoption of its proposed findings of fact and conclusions as its final findings and conclusions in the above-entitled proceedings and issued an order denying the application for renewal of license of Station WOKO to become effective April 27, 1945. The application, which was filed on October 1, 1942, has been the subject of extensive and protracted hearings before the Commission. Approximately 2½ years have elapsed since the expiration of the last regular license issued for the operation of that station.

Under the provisions of section 405 of the Communications Act, a petition for rehearing may be filed by any party or person aggrieved or whose interests are adversely affected by a Commission order within 20 days after the effective date thereof. It was with this provision in mind that the Commission in its order of March 27 provided that continued operation of the applicant's station would be permitted for an additional period of 30 days. This, in the Commission's opinion, afforded applicant ample time within which to prepare and file a petition for rehearing if it so desired. Applicant now seeks a further delay in the effective date of the Commission's order so as to permit the continued operation of its station until such time as the Commission may have had an opportunity to consider and act upon a petition for rehearing which applicant states it proposes to file within 20 days from April 27.

Twenty-eight days have already elapsed since the publication of the Commission's order, yet applicant has seen fit to defer the filing of its contemplated petition for rehearing. Nevertheless, the Commission has determined to grant applicant a special

70 temporary authorization permitting continued operation of Station WOKO until May 2, 1945. If applicant's proposed petition for rehearing shall be filed before that date, the Commission will then of its own motion grant such further authority for the continued operation of Station WOKO as may be necessary to permit full consideration and determination of such petition.

Accordingly, It is Ordered, This 24th day of April 1945, that a special temporary authorization for the continued operation of Station WOKO until 3 a. m. on May 2, 1945, be issued.

FEDERAL COMMUNICATIONS COMMISSION,
T. J. SLOWIE,
Secretary.

Before Federal Communications Commission

Petition for rehearing

Comes now WOKO, Incorporated, Albany, New York, licensee of Radio Station WOKO and applicant for renewal of license in Docket No. 6486, File No. B1–R–253; and files this petition for rehearing in accordance with the Commission's Rules of Practice and Procedure and Section 405 of the Communications Act of 1934.

PRELIMINARY STATEMENT

After hearing and argument the Commission on March 27, 1945, announced the adoption of its proposed findings of fact and conclusions as its final findings and conclusions in the above-entitled proceeding and issued an order denying the application for renewal of license of Station WOKO effective April 27, 1945. On April 20, 1945, this applicant filed with the Commission a petition for special order requesting authority to continue operation of Station WOKO after April 27, 1945. On April 24, 1945,

71 the Commission issued an opinion and order authorizing a special temporary authorization for the continued operation of Station WOKO until 3:00 A. M. on May 2, 1945.

Section 405 of the Communications Act of 1934 and Rule 1.271 of the Commission's Rules of Practice and Procedure provide for the filing of a petition for rehearing within twenty days after the effective date of any decision, order or requirement made by the Commission. Accordingly, the applicant is entitled to file a petition for rehearing in this case at any time within twenty days after April 27, 1945. However, by the decision of March 27, 1945, Station WOKO would have no authority to continue operation after 3:00 A.M. April 27, 1945.

In the Commission's opinion and order of April 24, 1945, the Commission said, among other things, "Nevertheless, the Commission has determined to grant applicant a special temporary authorization permitting continued operation of Station WOKO until May 2, 1945. If applicant's proposed petition for rehearing shall be filed before that date, the Commission *will then of its own motion grant such further authority for the continued operation of Station WOKO as may be necessary to permit full consideration and determination of such petition.*" [Italics supplied.]

INTEREST OF "WOKO," INCORPORATED

WOKO, Incorporated is an interested party and is aggrieved and its interests are adversely affected as contemplated by Section 405 of the Communications Act of 1934, as a result of the Commission on March 27, 1945, issuing an order denying the application for renewal of license in Docket No. 6486, File No. B1–R–253. It has been the licensee of the station for many years. WOKO, Incorporated has invested several hundred thousand dollars in the operation of such station over a period of the past fifteen years or more. Its financial losses will involve several hundred thousand dollars in the event its application for renewal of license in the above-styled docket is finally denied. It is
72 quite apparent that WOKO, Incorporated is an interested party which is aggrieved and adversely affected by the Commission's decision in Docket No. 6486, File No. B1–R–253.

GROUNDS FOR REHEARING

The Commission in its decision of March 27, 1945, denying the application for renewal of license of WOKO, Incorporated, based its decision principally upon certain official acts of certain officers of that corporation. The Commission did not find that the corporation was legally, financially or technically unqualified to hold a license. Nowhere in the decision were the programs or public service heretofore rendered by Station WOKO questioned in any wise. The Commission, however, did find that the present officers and directors and controlling stockholders holding such offices had been guilty of such concealments in official reports to the Commission as to render the corporation unfit to be licensed in the future.

The decision of the Commission did not in any wise pass upon the question of the qualifications of the present stockholders to hold minority interests in a licensee corporation. It simply decided that as now constituted WOKO, Incorporated, was not entitled to a renewal of license and hence, it was denied.

The decision of the Commission does not in any wise terminate the existence of the corporation, WOKO, Incorporated. It is now

and will continue to be, without any authority from the Commission, a legal entity under the laws of the State of New York. Its officers and directors and stockholders may be changed and even the death of any or all would not terminate the existence of the corporation. It is respectfully submitted that the corporation may be reorganized and thus be qualified and entitled to a renewal of license within the spirit of the Commission's decision of March
27, 1945. A corporation does not need the consent of the
73 Commission to change its officers and/or directors, and new ones may likewise be elected without the consent of the Commission. Changes in the stock ownership of a corporation may be made without the consent of the Commission if control is not involved. It is only when the corporation becomes a licensee or applicant for license that the corporation comes under the jurisdiction of the Commission to determine whether or not it is qualified to hold such a license.

With these things therefore in mind, WOKO, Incorporated proposes to reorganize and thus become qualified to hold a license and entitled to a renewal of the license heretofore granted to the corporation. Such reconstruction and reorganization, as proposed, is more fully set forth herein.

PROPOSED REORGANIZATION

The stock of WOKO, Incorporated is distributed as follows:

	Percent	*Shares*
Harold E. Smith	25.5	255
Raymond M. Curtis	25.5	255
The Press Company	25	250
R. K. Phelps	24	240

The latter block of stock is purportedly owned by either Sam Pickard or his wife, Francke P. Pickard. It however still stands on the books of the corporation in the name of R. K. Phelps and neither WOKO, Incorporated, nor its officers can, under the laws of the State of New York, change the record ownership without the surrender of the Phelps' certificate however much it may desire to do so.

The present directors of the corporation are as follows:

Harold E. Smith.
Raymond M. Curtis.
Deuel Richardson.

The present officers of the corporation are as follows:

Raymond M. Curtis, President.
Harold E. Smith, Secretary-Treasurer.
Deuel Richardson, Vice President.

74 The first step in the proposed reorganization is that the corporation, WOKO, Incorporated, will purchase the 240 shares of stock standing in the name of R. K. Phelps. The lowest price the corporation has been able to obtain on such stock is $82,000 cash. WOKO, Incorporated will purchase the stock owned by The Press Company for a consideration of $75,000, which price has been tentatively agreed upon by both parties. The corporation will purchase ten shares each from Harold E. Smith and Raymond M. Curtis. After such purchase, from Smith and Curtis each will own 24.5% of the stock of WOKO, Incorporated. Such purchase will be made at the book value of the stock, which book value will not include goodwill or any intangible values.

It is proposed that the 51% of the stock of WOKO, Incorporated, which will then be owned by WOKO, Incorporated, after same has been purchased from Messrs. Phelps-Pickard, The Press Company, Harold E. Smith and Raymond M. Curtis, will be sold to one or more prominent citizens of Albany who are now negotiating to purchase same.

It is proposed that in the reorganization the 490 shares of stock of WOKO, Incorporated which will then be owned by Harold E. Smith and Raymond M. Curtis, be placed in trust under a voting trust agreement for a period of years; certainly for the normal license period or longer. The said voting trustee shall have full power to vote such stock in any way that he shall deem fit. He shall have power to collect dividends on such stock and distribute it as trustee to Harold E. Smith and Raymond M. Curtis. The voting trust agreement and the voting trustee shall be subject to the approval of the Commission.

It is proposed that all of the officers and directors of the corporation will resign in accordance with the plan of reorganization and that the new stockholders shall elect new officers and directors. None of the existing officers or directors will be elected or serve as officers or directors after the reorganization.

75 WOKO, Incorporated, is now financially qualified and has the cash available with which to buy the stock of The Press Company, the Phelps-Pickard stock and the 20 shares from Smith and Curtis.

NECESSITY FOR REHEARING

The language of Section 405 of the Communications Act of 1934 contemplates a rehearing such as herein requested, to wit: "And if, in its judgment, after such rehearing and the consideration of all facts, *including those arising since the former hearing*". [Italics supplied.] Any proceeding other than a formal hearing would be an ex parte proceeding.

Although certain facts might be adduced by affidavit, the statute contemplates that facts arising since the former hearing shall be placed before the Commission for its consideration in a formal hearing in evidentiary form.

It is furthermore necessary to have a formal hearing in order that the proposed purchasers, officers, and directors may appear before the Commission and submit themselves to examination and cross-examination in order that the Commission may be fully informed as to their qualifications and the policies they intend to pursue in the future operation of the corporation.

TESTIMONY TO BE ADDUCED AT THE REHEARING

WOKO, Incorporated, if permitted to do so at a rehearing, will produce witnesses who will testify that:

1. The corporation shall acquire and own 51% of the capital stock of WOKO, Incorporated and shall be ready and willing to reissue said stock to prospective stockholders. Such acquisition of 51% of its capital stock by the corporation shall result from the purchase of stock now in the name of The Press Company, R. K. Phelps, and ten shares each from Harold E. Smith and Raymond M. Curtis.

76 2. That the prospective stockholders are fully qualified, ready and willing to purchase a total of 51% of the authorized and outstanding capital stock of WOKO, Incorporated, subject to the approval and consent of the Commission.

3. The remaining 49% of the capital stock of WOKO, Incorporated, will be owned in equal shares by Raymond M. Curtis and Harold E. Smith. Such stock will be placed in a voting trust, the voting trustee having full power to vote such stock as he may deem best; such trustee will be a man of unquestioned integrity, ability, and fully qualified to discharge his duties; the voting trust to have a dufation of one normal license period.

4. The present officers and directors of WOKO, Incorporated, will resign and be replaced by others fully qualified to hold such offices and Harold E. Smith, Raymond M. Curtis, and Deuel Richardson will not hold either an office or be named as a director, and will in no wise control or attempt to control the policies of the corporation.

5. If approved, the continued operation of Station WOKO as reorganized and relicensed will serve the public interest, convenience, and necessity.

It is respectfully suggested to the Commission, so that it may be fully informed, that the purchase by WOKO, Incorporated, of the stock now held and owned by The Press Company will also include a sale to The Press Company by Harold E. Smith and Ray-

mond M. Curtis of their present interest in Station WABY also located in Albany, New York. Full details with regard to this proposal are in the possession of the Commission in the form of a proposed contract which was submitted to it several months ago.

Wherefore, It is respectfully prayed that the Commission will, pursuant to Section 405 of the Communications Act of 1934 and its rules and regulations,

77 (1) Grant a rehearing in the above-entitled matter in order that this petitioner may present evidence supporting its plan of reorganization and all other pertinent matters;

(2) Pursuant to its order of April 24, 1945, "grant such further authority for the continued operation of Station WOKO as may be necessary to permit full consideration and determination of such petition";

(3) Grant such further operation as may be necessary and required pending determination as a result of the rehearing herein requested; and

(4) Grant such other and further relief in the premises as the Commission shall deem just and proper.

Respectfully submitted.

WOKO, INCORPORATED,
By HAROLD E. SMITH,
Secretary-Treasurer.

GEO. O. SUTTON, *Counsel,*
1030 National Press Building, Washington, D. C.
MICHAEL D. REILLY, *Counsel.*
SAMUEL A. JACOBS, *Counsel.*
APRIL 28, 1945.

* * * * *

Before Federal Communications Commission

Order

May 1, 1945

Whereas, the Commission in an opinion and order in the above-captioned proceedings, dated April 24, 1945, granted a special temporary authorization for the continued operation of Station WOKO, Albany, New York, until 3:00 a. m.

78 on May 2, 1945, and stated that if a petition for rehearing which applicant represented it proposed to file in the instant proceedings should be filed before that date, it would grant such further authority for the continued operation of Station WOKO as might be necessary to permit full consideration and determination of such petition; and

Whereas, on April 28, 1945, applicant did in fact file such petition for rehearing;

Now, therefore, it is ordered, This 1st day of May 1945, that a special temporary authorization be issued for the continued operation of Station WOKO until further order of the Commission.

[SEAL] FEDERAL COMMUNICATIONS COMMISSION,
T. J. SLOWIE, *Secretary.*

* * * * *

Before Federal Communications Commission

Order on petition for rehearing

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the first day of May 1945,

The Commission having under consideration a petition filed April 28, 1945, by WOKO, Inc. (WOKO), Albany, New York, for rehearing directed against the Commission's order of March 27, 1945, adopting as final its proposed findings and conclusions announced November 9, 1944, looking toward a denial of the application of WOKO for renewal of license, and denying that application, effective April 27, 1945.

It is ordered, That the petition for rehearing be, and it is hereby denied.

79 It is further ordered, That the special temporary authorization for the continued operation of Station WOKO be, and it is hereby, extended until 3 a. m., Thursday, May 31, 1945.

[SEAL] FEDERAL COMMUNICATIONS COMMISSION,
T. J. SLOWIE, *Secretary.*

Commissioner Wakefield absent; Commissioner Denny not participating.

* * * * *

96 Supreme Court of the United States

Order allowing certiorari

Filed April 22, 1946

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.

Thursday, October 18th, A. D. 1945

* * * * *

Before Honorable D. Lawrence Groner, Chief Justice, and Honorable Wilbur K. Miller and E. Barrett Prettyman, Associate Justices.

* * * * *

No. 9021, October Term, 1945

WOKO, Incorporated, appellant

vs.

Federal Communications Commission, appellee

Argument commenced by Mr. William J. Dempsey, attorney for appellant, continued by Mr. Harry M. Plotkin, attorney for appellee, and concluded by Mr. William J. Dempsey.

* * * * *

United States Court of Appeals, District of Columbia

No. 9021

WOKO, Incorporated, appellant

v.

Federal Communications Commission, appellee

Appealed from the Federal Communications Commission

Argued October 18, 1945—Decided January 21, 1946

(United States Court of Appeals for the District of Columbia. Filed Jan. 21, 1946. Joseph W. Stewart, Clerk.)

Mr. William J. Dempsey, with whom Mr. William C. Koplovitz was on the brief, for appellant.

Mr. Harry M. Plotkin, Assistant General Counsel, with whom Messrs. Rosel H. Hyde, General Counsel, Benedict P. Cottone, Assistant General Counsel, and Philip Bergson, Counsel, all of the Federal Communications Commission, were on the brief, for appellee.

Before Groner, C. J., and Wilbur K. Miller and Prettyman, JJ.

Wilbur W. Miller, J.: On September 28, 1942, the appellant, WOKO, Inc., applied to the Federal Communications Commission

for a renewal of the radio station license held by it for the operation of its broadcasting facilities at Albany, New York. Under permits periodically procured this radio station has been operated in Albany for some fifteen years last past. After extended hearings concerning the application of September 28, 1942, the Commission declined to renew the license. This appeal followed under that section of the Communications Act (U. S. C., Title 47, § 402 (b)) which grants to an applicant for renewal of a broadcasting station license the right to appeal to this court from an adverse decision.

Prior to November 1930, Station WOKO was located, first at Peekskill, and later at Poughkeepsie, New York. The license was held by the Hudson Valley Broadcasting Company, a partnership composed of Harold E. Smith and Raymond M. Curtis. Under authority granted by the Commission, the station was moved to Albany on November 25, 1930, and, shortly thereafter, the license was assigned by Smith and Curtis to the appellant. Early in 1931 broadcasting was begun at Albany.

While the station was at Poughkeepsie its operation was not profitable, and Curtis suggested that the license be surrendered. Smith thought it possible that a network affiliation might solve the financial difficulty. Accordingly, he visited the Columbia Broadcasting System at New York, where he met Sam Pickard, a vice president in charge of station relations. Pickard advised that CBS would not be interested in the station at Poughkeepsie, but suggested that if it were removed to Albany CBS would be interested in having WOKO as an affiliate.

Smith went to Albany and conferred with The Press Company, the publisher of the Albany Evening News and the Knickerbocker Press, with the purpose of interesting that company in the enterprise and obtaining financial assistance from it, as Curtis had tried of his losses at Poughkeepsie and was unwilling to finance the station further. The newspaper people agreed to aid, and it was determined that a corporation should be organized with one thousand shares of capital stock, seven hundred and fifty shares to be divided equally between Smith and Curtis and the remaining two hundred fifty shares to be held in the treasury under the option of The Press Company to purchase it. The corporation was organized on December 9, 1930, The Press Company endorsed for it a note to the extent of $35,000, the shares of the capital stock were issued as planned, and the station began to operate at Albany early in 1931. Pickard performed his promise to aid in obtaining a CBS affiliation agreement, and assisted also in other ways. At one of his conferences with Smith, Pickard suggested that he be given an interest in the appellant corporation. It was finally agreed that he have twenty-four percent of the capital stock and, pursuant to this

agreement, on October 23, 1931, Smith and Curtis transferred of record to Pickard a total of one hundred forty shares, and, at his suggestion, to Lawrence Lowman, another vice president of CBS, a total of one hundred shares. These certificates were endorsed by Pickard and Lowman and then delivered to The Press Company to serve as a part of the collateral securing its endorsement. In August 1932, the appellant's loan had been paid and the two hundred forty shares of stock in the names of Pickard and Lowman were released from the pledge and transferred of record to Pickard's wife. On February 2, 1933, the certificates evidencing the same two hundred forty shares, having been endorsed by Mrs. Pickard, were reissued to Smith, endorsed by him in bland and forwarded to Pickard. Smith continued as the owner of record of that block of two hundred forty shares until June 1934, when, at the request of Pickard, he assigned eighty shares each to Mrs. Pickard and two holding companies controlled by the Pickards.

Same Pickard had been a member of the Federal Radio Commission before he became a vice president of Columbia Broadcasting System. When he first asked for and obtained an interest in WOKO, Inc., he requested of Smith that his ownership in the station be kept secret, on the ground that he would be personally embarrassed if his associates at CBS should learn of it. He also informed Smith that there would be no need to disclose his ownership to the Federal Radio Commission, as that Commission was interested only in knowing whether or not any of the stockholders were aliens.

Smith agreed to protect Pickard in that respect and did not disclose to the Radio Commission the fact that Pickard was a stockholder. In 1934, however, when more searching inquiries were made concerning stock ownership by the forms required to be filed with the Communications Commission, Smith notified Pickard that he must divest himself of the stock and that, failing that, he (Smith) would divulge the facts to the Commission. As a result of this ultimatum, Pickard informed Smith that he had decided to give the two hundred forty shares to his wife's brother-in-law, R. K. Phelps, an assistant United States attorney at Kansas City. Mrs. Pickard and the two holding companies, the record owners of eighty shares each of the block of two hundred forty shares in question, endorsed and surrendered the certificates and a new certificate for two hundred forty shares was issued on July 2, 1934, in the name of R. K. Phelps. The stock has remained in his name on the corporate records since that time and has been so represented to the Commission.

When the Commission received on October 1, 1942, the appellant's application for a renewal of its license, dated September 28,

1942, it designated the matter for hearing and specified the following issues:

"(1) To determine whether the representations and statements made to the Commission or its predecessor, the Federal Radio Commission, by the licensee, its officers, directors, stockholders, or agents, with respect to the ownership or transfer of, subscription to, or consideration paid for the stock of WOKO, Inc., truly and accurately reflect the facts.

"(2) To determine all the circumstances and conditions under which the stock of WOKO, Inc., has been issued, transferred, or assigned.

"(3) To determine whether or not the applicant is qualified to continue the operation of Station WOKO.

"(4) To determine whether, in view of the facts adduced under the foregoing issues, public interest, convenience, and necessity would be served by a grant of this application."

There followed then a period of rather intensive investigation by the Commission, which included visits to Albany and Kansas City by a member of the Commission's legal staff. On June 26, 1943, the appellant petitioned the Commission to amend and enlarge the issues by including the following:

"1. To determine the nature, character and extent of the program service rendered by Station WOKO in the past, as well as that which is proposed to be rendered in the future.

"2. To determine the nature, character, and extent of the activities and/or policies of the licensee, its officers, directors, stockholders, agents, and/or employees, with respect to the operation of the station, the public service rendered thereby, and the response of the public to such activities and/or service in the past, and the proposals for future policies, activities and operation."

The Commission declined to amend and enlarge the hearing issues on the ground that those originally designated were "broad enough to permit, within reasonable bounds, the introduction of the evidence suggested by the proposed issues of the petitioner."

Hearings were held in July, August, and September, 1943, at which evidence of many witnesses was received and numerous exhibits were filed as parts of the record. It developed that Smith and Curtis each held twenty-five and one-half percent of the capital stock of the appellant, that The Press Company had exercised its option in 1932 to purchase twenty-five percent of the stock for $25,000, and that the remaining twenty-four percent had stood in the name of R. K. Phelps on the corporation register since July 2, 1934. Phelps testified that he knew nothing of the transfer of the stock to him, that he was not and had never been the actual owner of it and that he had been imposed upon by Pickard in that respect. It appeared that dividend checks regu-

larly had been issued by the corporation to Phelps and had been addressed to him in care of Pickard, and that Mrs. Pickard had endorsed Phelps' name to the checks, then had placed thereon her own endorsement and had accounted for the dividends in her personal income tax returns. Certain waivers of notice of meetings, with Phelps' name signed to them, were sent to the appellant, but it appears that they were signed by Mrs. Pickard. Mrs. Phelps, sister to Mrs. Pickard, testified that she intercepted pieces of mail from WOKO, Inc., addressed to her husband and did not bring them to his attention.

It appears clearly from the evidence that the Pickards received the dividends on the two hundred forty shares of stock, and the Commission's conclusion that they were the beneficial owners of it throughout the entire period in question is well grounded in the evidence. Smith testified that he believed Phelps to be the owner until he was advised otherwise by Pickard's letter of June 15, 1942. Pickard said that he did not inform Smith of the actual fact with respect to beneficial ownership until he wrote that letter. Nevertheless there is enough in the record to justify the conclusion of the Commission that Smith knew, or should have known, that Phelps was not actually the owner of the stock. So, it may be treated as established by the evidence that Smith, in making reports and applications for the appellant from 1934 to 1942, gave the Commission only the name of the record owner of two hundred forty shares of stock, and withheld the name of the beneficial owner, which he knew, or should have known.

The Commission did not find that this concealment of fact had influenced it in making any decision throughout the years involved, nor did it find that it would have acted in any manner differently from the way it did act on the various applications for renewal of license, had it known that the Pickards were the beneficial owners of these shares of stock. The Commission did not find that the Pickards were aliens or that they were disqualified in any way to own the number of shares of the appellant's stock which they beneficially owned. Indeed, such findings could not have been made by the Commission because there is no evidence upon which it could have based them.

There is no finding that Curtis, who owned twenty-five and one-half percent of the appellant's capital stock, and The Press Company, which owned twenty-five percent of the appellant's capital stock, had any part in, or knowledge of, Smith's concealment of the Pickard interest. It does appear that Curtis and The Press Company knew of the original issue of two hundred forty shares to Pickard or his nominee, but there is no suggestion that either participated in or knew of Smith's deception.

Having found that the appellant had failed to reveal to it and to its predecessor, the Federal Radio Commission, the fact of the Pickards' beneficial ownership of two hundred forty shares of stock, the Commission proceeded to the conclusion that the appellant "cannot be entrusted with the responsibilities of a licensee." The findings close thus:

"The Commission, therefore, finds that a grant of the application for renewal of the license for the operation of WOKO by the appellant corporation would not serve public interest, convenience, or necessity, and therefore should be denied."

The question posed by this appeal is whether it clearly appears that this finding of the Commission is arbitrary or capricious, for the statute provides (U. S. C., Title 47, § 402):

"That the review by the court shall be limited to questions of law and that findings of fact by the Commission, if supported by substantial evidence, shall be conclusive unless it shall clearly appear that the findings of the Commission are arbitrary or capricious."

This limitation of judicial review of decisions of the appellee is consistent with the general body of law concerning the finality of administrative proceedings. The Congress of the United States, which has plenary power to regulate the radio industry, has designated the Commission as its administrative agent, because it desired to have the regulatory work done by technically trained experts, skilled and experienced in the technical duties of radio regulation. The Congress defined the scope of the authority of its agent or, as is sometimes said, it established the standard according to which the agent should act. The broad scope of authority, or standard of action, established by the Communications Act is that public interest, convenience, and necessity must be served. Within that framework the administrative agent is free to exercise its expert judgment; it cannot act unconstitutionally, for neither could its principal, the Congress, and the stream cannot rise higher than the source; it must proceed within the scope of the authority granted to it, that is to say, it must observe the standard established; and it cannot act arbitrarily or capriciously.

The broad sweep of the power given to the administrative agent to proceed according to a standard which necessarily is expressed in very general and widely inclusive terms proves how pertinent was the observation of Mr. Justice Justin Miller when he said, speaking for this court, that radio station licensees must be protected from arbitrary action of the Commission in the exercise of its regulatory power.[1]

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[1] After showing that the Act does not recognize that licensees have any common law rights in Network radio broadcasting, this court in Yankees v. Federal Communications Commission, 71 App. D. C. 11, said that nevertheless the Act does recognize cer-

Broad as the standard is, the Supreme Court has said that it is not so indefinite as to confer unlimited power.[2] The doctrine is that the act of the administration agent is the act of Congress itself, as long as the agent stays within the boundaries of the standard and does not act arbitrarily or capriciously. Judicial review is limited, therefore, to the ascertainment of whether there has been an unconstitutional thing done by the agent, or whether the agent has exceeded its delegated authority by crossing the boundary of the standard, or has acted arbitrarily or capriciously.

Subject to the specific statutory provisions against the ownership or holding of radio station licenses by aliens, foreign governments, or corporations which have an alien tinge through stock ownership,[3] the Communications Act simply directs the Commission to grant or renew a license if it shall find that public interest, convenience, or necessity will be served thereby.[4] It would be difficult, if not impossible, to formulate a precise and comprehensive definition of the term "public interest, convenience, or necessity," and it has been said often and properly by the courts that the facts of each case must be examined and must govern its determination.[5] It seems clear, however, that a decision of the Commission refusing to renew a license should not be allowed to stand if it appears that the Commission's prior and necessarily basic determination that public interest, convenience, or necessity will not be served by the renewal, was not properly reached; that is, that proper standards were not applied in reaching the conclusion that a renewal would not serve the public interest, con-

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tain rights of licensees and their ownership of their stations. The statute prohibits the use or operation of a broadcasting station except pursuant to a license and punishes as a criminal act the operation of such a station without a license. The opinion continues thus:

"It is apparent, therefore, that a radio broadcasting station is valueless without a license to operate it. It is equally apparent that the granting of a license by the Commission creates a highly valuable property right, which, while limited in character, nevertheless provides the basis upon which large investments of capital are made and large commercial enterprises are conducted. As it is the purpose of the Act to secure the use of the channels of radio communication by private licensees under a competitive system, these licensees must be protected in that use, not merely from unlicensed stations and unlicensed operators, but from improper activities of licensed stations and operators, and from arbitrary action by the Commission, itself, in the exercise of its regulatory power."

[2] Federal Radio Commission v. Nelson Bros. Company, 289 U. S. 266, 285.

[3] The Communications Act (U. S. C., Title 47, § 310) contains a provision that a radio station license shall not be granted to or held by an alien, nor by a corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens, as well as other restrictive provisions designed to keep the broadcasting service of the nation under domestic control.

[4] U. S. C., Title 47 § 307 (a): "The Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this chapter, shall grant to any applicant therefor a station license provided for by this chapter."

U. S. C., Title 47, § 309 (a): "If upon examination of any application for a station license or for the renewal or modification of a station license, the Commission shall determine that public interest, convenience, or necessity would be served by the granting thereof, it shall authorize the issuance, renewal, or modification thereof in accordance with said finding. In the event the Commission, upon examination of any such application does not reach such decision with respect thereto, it shall notify the applicant thereof, shall fix and give notice of a time and place for hearing thereon, and shall afford such applicant an opportunity to be heard under such rules and regulations as it may prescribe."

[5] Section 402 (c) of Communications Act; Federal Communications Comm. v. Pottsville Broadcasting Co., 309 U. S. 134.

venience, or necessity, and thus that the conclusion reached was arbitrary or the result of caprice.

It is obvious that, in dealing with an application for the renewal of a license, the quality of the applicant's programs and the adequacy of the applicant's mechanical and scientific broadcasting facilities are principal among the elements to be considered. Concerning these particulars although the Commission made no finding with respect to them, substantial and undisputed evidence in the record shows that Station WOKO consistently has rendered reasonably satisfactory service to its listeners and that it has not been guilty of delinquency in service which would support the conclusion that it should be denied a renewal of its license for that reason. Probably the principal concern which the general public has in Station WOKO is with the quality of the music and messages which it emits.

It should be remembered that the appellant sought the enlargement of the issues specified by the Commission to include the fundamental issue of the quality of its program service and the practical and technical excellence of its facilities and their operation. The Commission declined to make the suggested enlargement because it said that the issues originally announced by it were sufficiently broad to permit the introduction of evidence concerning those aspects of the case. It is perhaps not without significance that at the hearing the Commission's counsel objected to the introduction of evidence by the appellant intended to show that it had served its area well and that it is mechanically and scientifically equipped to do so. Although the trial examiner received the evidence, the Commission made no finding with respect thereto. On this appeal, it is the duty of the court to examine the evidence to see if it furnishes a substantial basis for the Commission's findings of fact, and to see if there is anything material in the evidence which should have been found by the Commission, but which is omitted from its findings. The latter is important because, if the administrative agent fails to find formally some relevant element of the factual situation, there is disclosed the beginning of an arbitrary or capricious conclusion.

The record reveals, not only that the Commission made no finding with respect to the quality of the appellant's service in the past and its equipment for good service in the future, but also that it failed to mention in its findings anything of the value of the property which its decision would render almost valueless. It failed to notice the innocence of Curtis and The Press Company concerning Smith's concealment of Pickard's stock ownership. These things we regard as being material. There is evidence in the record that in 1943 an offer of $75,000 was made for twenty-five percent of the appellants capital stock. This indicates the

value of the stock owned by Curtis and The Press Company which will be largely lost to them should the Commission's decision stand.

When a broadcasting station has been constructed, necessarily at considerable cost, and has been maintained and operated to the satisfaction of its listeners, it is ordinarily in the public interest that the station continue to operate, and a renewal of its license should not be refused unless there exist as a basis for the refusal what this court has called "compelling reasons." Those reasons must be such as bear on the interest of the public, or such as have effect upon its necessity or its convenience; nothing less can be "compelling," and on no other ground does the statute authorize the Commission to deny the renewal.[6]

Under the authority of the Communications Act (Section 312, Title 47, U. S. C.)[7] a station license may be revoked by the Commission for false statements, either in the application or in the statements of fact which may be required under Section 308, or because the statements of fact revealed conditions which would have justified the refusal of a license in the first instance. It may be said, therefore, that the Commission may refuse to renew a license for any similar reason. It seems to us, however, that it is impossible to dissociate the provisions of Section 312 from those of Sections 307 and 309.[8] The latter two sections contain the broad standard that the public interest, convenience, and necessity must be served; and the Commission is directed to grant a license or renewal; once it appears that the public will be served in those particulars. So, a station license may not be revoked,

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[6] Journal v. Federal Radio Comm'n., 60 App. D. C. 92; Chicago Federation of Labor v. Federal Radio Comm'n., 59 App. D. C. 333.

[7] U. S. C., Title 47, § 312 (a): "Any station license may be revoked for false statements either in the application or in the statement of fact which may be required by section 308 of this title, or because of conditions revealed by such statements of fact as may be required from time to time which would warrant the Commission in refusing to grant a license on an original application, or for failure to operate substantially as set forth in the license, or for violation of or failure to observe any of the restrictions and conditions of this chapter or of any regulation of the Commission authorized by this chapter or by a treaty ratified by the United States: Provided, however, That no such order of revocation shall take effect until fifteen days' notice in writing thereof, stating the cause for the proposed revocation, has been given to the licensee. Such licensee may make written application to the Commission at any time within said fifteen days for a hearing upon such order, and upon the filing of such written application said order of revocation shall stand suspended until the conclusion of the hearing conducted under such rules as the Commission may prescribe. Upon the conclusion of said hearing the Commission may affirm, modify, or revoke said order of revocation."

[8] U. S. C., Title 47, § 307 (a): "The Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this chapter, shall grant to any applicant therefor a station license provided for by this chapter."

U. S. C., Title 47, § 309 (a): "If upon examination of any application for a station license or for the renewal or modification of a station license, the Commission shall determine that public interest, convenience, or necessity would be served by the granting thereof, it shall authorize the issuance, renewal, or modification thereof in accordance with said finding. In the event the Commission upon examination of any such application does not reach such decision with respect thereto, it shall notify the applicant thereof, shall fix and give notice of a time and place for hearing thereon, and shall afford such applicant an opportunity to be heard under such rules and regulations as it may prescribe."

under the authority of Section 312, for a false statement in the application unless in exercising a sound discretion the Commission should decide that, because of such false statement, the public interest, convenience, or necessity would be served by a revocation of the license. In reaching such a decision, the Commission must weigh, as it apparently heretofore has done consistently, the competing considerations which enter into the determination of the question whether the public interest, convenience or necessity would be served by a revocation. Any other construction of Section 312 would arm the Commission with arbitrary power to revoke a license for the most inconsequential misstatement by the licensee.

For all the foregoing reasons we conclude that the Commission does not have the power, implied from the provisions of Section 312 or otherwise, to refuse to issue a renewal license because of misstatements of the licensee, unless those misstatements are of such moment as to outweigh all competing considerations, and logically, and rationally to give rise to the conclusion that the public interest, convenience, and necessity would not be served were the license renewed. In other words, the guiding star of the Commission concerning the issue of a station license or a renewal thereof is fixed by the statute as the service of the interest, convenience or necessity of the public. Every specific grant of authority to the administrative agent of the Congress must be used so as to contribute to that service, or it will be correctly characterized as arbitrary, if hurt results to anyone.

Its decision in the present case constitutes a departure from the course which the Commission has taken in dealing with misstatements in applications in other cases. It has not heretofore considered itself bound to refuse to issue a license or a renewal because of misstatements in applications; on the other hand, it has followed the practice of weighing all the elements of each situation presented to it in deciding whether the public interest would or would not be served, were a license or a renewal granted.[9] The doctrine of stare decisis does not apply to decisions of administrative bodies such as the Communications Commission, but radical departures from administrative interpretation consistently followed cannot be made except for most cogent reasons. Indeed it has been said that the adoption by an administrative agency of different standards for similar situations amounts to acting arbitrarily.[10]

The Navarro case (8 F. C. C. 198) is an illustration of the manner in which the Commission heretofore has interpreted the statute as

[9] Navarro Broadcasting Association, 8 F. C. C. 198; Red Lands Broadcasting, 8 F. C. C. 473; In the matter of Panama City Broadcasting Company, 9 F. C. C.

[10] National Labor Relations Board, v. Mali, 119 F. (2d) 700.

to its duty in dealing with misstatements made by applicants for licenses. The Commission revoked the license of Navarro but, after a hearing had subsequent to the order of revocation, set aside that order. The finding was that the applicant had misrepresented its purpose as to the financing, construction, control, and operation of the station, in obtaining the original construction permit and station license. The Commission also found that the members of the original partnership which obtained the construction permit and initial license, had transferred those rights to Ulmer and Terry without the consent of the Commission and in violation of the Act. But, because Ulmer and Terry relinquished their rights to others who proceeded to operate the station in the interest of the public and in full compliance with official regulations, the Commission concluded that "there is nothing in this record to indicate that the respondents, if permitted by this Commission, will not continue to operate in the public interest as they have done since November 1937." The opinion of the Commission then adds the following statement:

"In determining whether to revoke the license of a radiobroadcast station for false representations to the Commission and other violations of the Communications Act, the Commission is faced with competing considerations. The Commission's primary duty is to the listening public and, in dealing with a licensee, the Commission must be guided by this primary duty. On the other hand, if the Commission is to carry out its function of granting and denying applications for licenses, it must obtain true and accurate information from those who seek to operate radio stations and must take disciplinary action against those who make false representations to the Commission. But discipline should not be inexorably applied when station licensees demonstrate to the Commission, as these respondents have now done, that they are ready to act in good faith.

"To revoke their license at this time would deprive the community of the service of this station when there is no reason to believe that the respondents will not continue to operate it in the public interest."

In the case at bar, in a petition for rehearing, the applicant proposed a complete corporate reorganization of WOKO, Inc. The suggested plan included the resignation of all officers and directors who had served as such theretofore; the Phelps stock and other shares aggregating fifty-one percent were to be held by a new corporation controlled by prominent Albany citizens; and such shares as Smith and Curtis would have left were to be placed in a voting trust under the terms of which those individuals would have no voice in a stockholders' meeting. This arrangement, had it been consummated, would have fit into the reasoning of the Commission

in the Navarro case, when it is remembered that the mechanical, scientific and program excellence of the station is not challenged. But the Commission denied the petition for rehearing and adhered to its refusal to renew the license, and so departed from its policy of weighing the "competing considerations" in an effort to find what course will best serve the interest, convenience, or necessity of the public.

Moreover, common justice to the owner of the station, who has devoted a considerable investment to serving the public, requires that for no reason less than a "compelling" one should his physical property be rendered valueless except for what it may bring at a sacrificial sale. It is true, as the appellee points out, that by the terms of the Communications Act, a station license does not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof, nor in any other manner than authorized therein. In spite of the absence of a vested property right in the continuance of the license, however, the Commission may not destroy or diminish the capital investment of the licensee by withholding a renewal of the license, unless in the exercise of a sound discretion it decides that the public interest, convenience, or necessity requires that such a drastic step be taken. The case of Journal v. Federal Radio Commission, 60 App. D. C. 92, was one in which a radio station had been affected injuriously by the assignment of its frequencies to another station. In the course of the opinion Judge Robb, speaking for this court, said:

"The installation and maintenance of broadcasting stations involve a very considerable expense.—Where a broadcasting station has been constructed and maintained in good faith, it is in the interest of the public and common justice to the owner of the station that its status should not be injuriously affected, except for compelling reasons."

If a station should not be injuriously affected save for compelling reasons, certainly it should not be destroyed by a refusal to renew its license for reasons that are less than compelling.

To the same effect is the opinion of this court by Chief Justice Martin in Chicago Federation of Labor v. Federal Radio Commission, 59 App. D. C. 333, 41 F. (2d) 422. The appellant there was applying for a frequency of 770 kilocycles, which already had been granted to Stations WBBM and KFAB. The Commission refused to grant that frequency to the appellant because to do so would have denied the use of it to the two stations already using it. This court affirmed the action of the Commission and said:

"It is not consistent with true public convenience, interest or necessity, that meritorious stations like WBBM and KFAB should be deprived of broadcasting privileges when once granted to them,

which they have at great cost prepared themselves to exercise, unless clear and sound reasons of public policy demand such action. The cause of independent broadcasting in general would be seriously endangered and public interest correspondingly prejudiced if the licenses of established stations should be arbitrarily withdrawn from them, and appropriated to the use of other stations. This statement does not imply any derogation of the controlling rule that all broadcasting privileges are held subject to the reasonable regulatory power of the United States, and that the public convenience, interest, and necessity are the paramount considerations."

Simply stated, the question in this case is whether it is logical and rational to say that a licensee cannot be entrusted with further responsibilities for the sole reason that, over a term of years, one of its officers has concealed from the Commission the identity of a benficial owner of twenty-four per cent of its capital stock. It is conceded that the stockholder whose identity was not revealed was not an alien and, therefore, not disqualified by the express provisions of the statute. It does not appear, as pointed out above, that the concealment influenced or induced the Commission's action in granting license renewals heretofore, nor that the Commission's past decisions which granted renewals would have been different had the identity not been concealed.

The denial of the renewal because of the applicant's failure to show the beneficial ownership of twenty-four per cent of its capital cannot be justified as a penalty for making false statements. The Act does not confer upon the Commission any punitive jurisdiction, and a license or its renewal may not be withheld in order to punish an applicant for violating the Act or a rule or regulation of the Commission. Such violations are to be punished only by the imposition after conviction, of the heavy fines imposed by Sections 501 and 502 of the Act. Nor does the Commission claim the right to punish, but on the contrary disavows any punitive intent here.

So it is manifest that the Commission's decision must depend for validity on the rationality of the step, directly and without any other consideration, from the Commission's well-grounded finding that the real beneficial owner of twenty-four percent of the stock had been concealed from it, to the conclusion that the appellant "cannot be entrusted with the responsibilities of a licensee," and the consequent additional conclusion that the renewal license would not serve the public interest, convenience, or necessity.

We are unable to agree that the step can logically be taken. Other elements must necessarily be weighed. Certainly the condition cannot be upheld as a penalty, for the reason stated heretofore; but the conclusion that the denial of the renewal license

was penal in nature and so intended by the Commission cannot be escaped, for the appellant is the same corporation now which for fifteen years consistently has furnished adequate and satisfactory broadcasting service to its public, and has in all respects met the requirements of law and regulation except in the concealment of stock ownership upon which the Commission based its action. The Commission was quite justified in feeling vexed at the deception, and perhaps would have been justified in seeking criminal prosecution of Smith or of the appellant itself; but to say that this concealment, which did not induce or influence its former grants of renewal licenses, alone supports a conclusion that public interest, convenience, or necessity would not be served by the renewal, is in logic a non sequitur. The high mechanical, scientific and artistic standards maintained by the station, and the highly penal result of the deprivation of a license for a continuance of operation, are necessary considerations in the formation of a judgment as to public interest, convenience, or necessity.

Under the situation disclosed here, we conclude that the Commission acted arbitrarily in proceeding from its warranted conclusion that the stock ownership had been misrepresented to it, to the drastic decision that the continuance of the license would not be in the public interest, with the concomitant results of disestablishing an established and satisfactory radio station and of imposing upon its corporate owner the entire loss of its good will and the serious impairment of the value of its capital assets.

Reversed.

GRONER, C. J., Dissenting:

I regret that I am not in accord with the conclusion reached by the majority. I do, however, very heartily agree with the view that this is a hard case. The Commission's drastic order, terminating the life of the station, punishes the innocent equally with the guilty, and in its results is contrary to the Commission's action in several other comparable cases. But that the making of the order was within the discretion of the Commission, I think is reasonably clear.

Shortly stated, the record shows the WOKO, Inc., acting through its General Manager, who ever since its organization has represented it in all of its transactions with the Commission, deliberately misled the Commission by repeatedly misstating the beneficial ownership of twenty-four percent (24%) of its capital stock. What, if anything, would have happened if the truth had been disclosed is, in my view, not material.

The case, as I think, turns rather upon the question whether the statutory power of the Commission to determine public interest, convenience, or necessity is broad enough to authorize the rejection of a license for renewal for repeated false swearing in statements of fact required to be filed by the Commission's rules

and regulations.[11] An affirmative answer to the question seems to me to be obvious on the grounds of public policy and, accordingly, I do not stop to inquire whether the express statutory authority to revoke impliedly embraces also the power to refuse to renew.[12]

United States Court of Appeals for the District of Columbia

No. 9021—January Term, 1946

WOKO, INCORPORATED, APPELLANT

vs.

FEDERAL COMMUNICATIONS COMMISSION, APPELLEE

Appeal from the Federal Communications Commission

Before GRONER, C. J., and WILBUR K. MILLER and PETTYMAN, JJ.

(United States Court of Appeals for the District of Columbia. Filed Jan. 21, 1946. Joseph W. Stewart, Clerk.)

Judgment

This cause came on to be heard on the transcript of the record from the Federal Communications Commission, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the decision of the said Federal Communications Commission appealed from in this cause be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said Federal Communications Commission for further proceedings not inconsistent with the opinion of this Court.

Per Mr. JUSTICE WILBUR K. MILLER.

Dated January 21, 1946.

Dissenting opinion by Mr. Chief JUSTICE GRONER.

United States Court of Appeals for the District of Columbia

No. 9021

WOKO, INCORPORATED, APPELLANT

v.

FEDERAL COMMUNICATIONS COMMISSION, APPELLEE

(United States Court of Appeals for the District of Columbia. Filed Fed. 14, 1946. Joseph W. Stewart, Clerk.)

Designation of record

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for writ

[11] 47 U. S. C. § 308.
[12] 47 U. S. C. § 312.

of certiorari in the above-entitled cause, and include therein the following:

1. Joint appendix.
2. Minute entry of argument.
3. Opinion of the United States Court of Appeals for the District of Columbia.
4. Judgment of the United States Court of Appeals for the District of Columbia.
5. Designation of record.
6. Clerk's certificate.

J. HOWARD MCGRATH,
Solicitor General of the United States of America,
ROSEL H. HYDE,
General Counsel,
Federal Communications Commission.
HARRY M. PLOTKIN,
Asst. General Counsel,
Federal Communications Commission.

FEBRUARY 13, 1946.

Acknowledgment of service

Receipt of a true copy of Appellant's "Designation of record" is hereby acknowledged this — day of February 1946.

WILLIAM C. KOPLOVITZ,
Counsel for Appellant.

United States Court of Appeals for the District of Columbia

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia, hereby certify that the foregoing pages numbered from 1 to 93, both inclusive, constitute a true copy of the joint appendix to the briefs and the proceedings of the said Court of Appeals as designated by counsel for appellant in the case of WOKO, Incorporated, Appellee vs. Federal Communications Commission, Appellee, No. 9021, January Term, 1946, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this twenty-fifth day of February A. D. 1946.

(SEAL)

JOSEPH W. STEWART,
Clerk of the United States Court
of Appeals for the District of Columbia.

U. S. GOVERNMENT PRINTING OFFICE: 1946